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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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SERVER TECHNOLOGY, INC.,

Plaintiff,

v.

AMERICAN POWER CONVERSION  
CORPORATION,

Defendant.

Case No. 3:06-cv-0698-LRH-VPC

ORDER

This order is amending and re-issuing certain vacated orders pursuant to the court’s February 23, 2017 vacate order. ECF No. 691.

In brief, after an appeal following a jury trial on the issues of copyright infringement, the Federal Circuit issued an order on September 23, 2016, finding that the court’s claim construction of the term “plugstrip” as used in the patents-in-suit was erroneous and thus reversed and remanded the action back to this court. *Server Tech., Inc. v. Am. Power Conversion Corp.*, 657 Fed. Appx. 1030, 1033-34 (Fed. Cir. 2016). Upon receiving the Federal Circuit’s decision, the court ordered the parties to file a joint status report addressing the impact of the Federal Circuit’s decision on this action. ECF No. 689. Thereafter, the parties filed a joint status report in accordance with the court’s order. ECF No. 690.

On February 23, 2017, the court issued its order vacating all orders found by the court to have relied upon or applied the court’s construction of “plugstrip” in violation of the Federal

1 Circuit's recent construction. However, as part of that order, the court noted that several of the  
2 vacated orders addressed additional claims or issues not impacted by the Federal Circuit's  
3 decision. For those orders, the court stated that it would issue amended orders establishing which  
4 portions of these orders have been vacated pursuant to the Federal Circuit's decision and which  
5 portions of the orders remain valid and binding in this litigation. This order constitutes the  
6 court's order amending and re-issuing portions of those vacated orders.

7 The following orders have been amended and shall be re-issued by the court: (1) the  
8 court's order addressing defendant American Power Conversion Corp.'s ("APC") motion for  
9 summary judgment (ECF No. 381);<sup>1</sup> (2) the court's order addressing plaintiff Server Technology,  
10 Inc.'s ("STI") motion for a permanent injunction (ECF No. 651);<sup>2</sup> and (3) the court's order  
11 entering ongoing royalty (ECF No. 663).<sup>3</sup> The court notes the following rules guide the amended  
12 orders. First, all portions of the amended orders that are still vacated in light of the court's re-  
13 issuance of the orders are STRUCKTHROUGH. The court retains the framework of the order for  
14 the record and the court's and parties' benefit. Second, any additional language not present in the  
15 original order shall be enclosed within BRACKETS to identify the additional language. Such  
16 additional language is to comply with changes to the local rules, for ease of reading, and/or  
17 clarification purposes but such additional language does not constitute nor create any new law of  
18 the case.

19 Additionally, the court has amended and shall re-issue the jury verdict (ECF No. 590) in  
20 this action in accordance with the Federal Circuit's order and the parties' agreement as set forth  
21 in the joint status report.<sup>4</sup> The court directs the parties' attention to the amended jury verdict. Due  
22 to the nature of the Federal Circuit's order, all damages relating to the AP7900 series of products  
23 is vacated. Yet, the portion of the damages award relating to the AP8900 series of products is not  
24 vacated. The court, and the parties, recognize that the copyright infringement damages relating to  
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26 <sup>1</sup> A copy of the court's amended order addressing APC's motion for summary judgment is attached as Exhibit 1 to  
this order.

27 <sup>2</sup> A copy of the court's amended order addressing STI's motion for a preliminary injunction is attached as Exhibit 2  
to this order.

28 <sup>3</sup> A copy of the court's amended order entering an ongoing royalty is attached as Exhibit 3 to this order.

<sup>4</sup> A copy of the amended jury verdict is attached as Exhibit 4 to this order.

1 the AP8900 series of products is 5% of total sales of those products. However, that information  
2 is solely within the control of the parties. As such, the parties shall prepare an appropriate order  
3 setting the damages for the AP8900 series of products consistent with the jury's verdict and  
4 submit the same for signature after which the court shall separately order the clerk of court to  
5 enter an appropriate judgment relating to the AP8900 series of products. The same rules guiding  
6 the court's amended orders guides the amended jury verdict.

7  
8 IT IS THEREFORE ORDERED that the clerk of court shall re-issue the amended order  
9 addressing defendant's motion for summary judgement (ECF No. 381) attached as Exhibit 1 to  
10 this order.

11 IT IS FURTHER ORDERED that the clerk of court shall re-issue the amended order  
12 addressing plaintiff's motion for a permanent injunction (ECF No. 651) attached as Exhibit 2 to  
13 this order.

14 IT IS FURTHER ORDERED that the clerk of court shall re-issue the amended order  
15 entering an ongoing royalty (ECF No. 663) attached as Exhibit 3 to this order.

16 IT IS FURTHER ORDERED that the clerk of court shall re-issue the amended jury  
17 verdict in this action (ECF No. 590) attached as Exhibit 4 to this order.

18 IT IS FURTHER ORDERED that the parties shall, within twenty (20) days after entry of  
19 this order, prepare an appropriate order setting forth the damages to be awarded to plaintiff as it  
20 relates to defendant's AP8900 series of products in accordance with this order and submit the  
21 same for signature.

22 IT IS SO ORDERED.

23 DATED this 12<sup>th</sup> day of May, 2017.

24   
25 LARRY R. HICKS  
26 UNITED STATES DISTRICT JUDGE  
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# EXHIBIT 1

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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

SERVER TECHNOLOGY, INC.,	)	
	)	
Plaintiff and Counterdefendant,	)	3:06-CV-00698-LRH-VPC
	)	
v.	)	
	)	<u>AMENDED ORDER</u>
AMERICAN POWER CONVERSION	)	
CORPORATION,	)	
	)	
Defendant and Counterclaimant	)	
_____	)	

Before the court is defendant American Power Conversion Corp.’s (“APC”) motion for summary judgment on the issues of anticipation, obviousness, and non-infringement. Doc. #287.<sup>1</sup> Plaintiff Server Technology, Inc. (“STI”) filed an opposition (Doc. #301) to which APC replied (Doc. #324).<sup>2</sup>

**I. Facts and Procedural History**

**A. Procedural Overview**

Plaintiff STI manufactures intelligent power distribution devices. STI brought the underlying patent infringement action against defendant APC alleging that APC’s product designs

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<sup>1</sup> Refers to the court’s docket number.

<sup>2</sup> [This is an amended and re-issued order of the court’s now-vacated original order granting in-part and denying in-part APC’s motion for summary judgment. Doc. #391.]

1 infringe three of its patents: United States Patents numbers 7,043,543 (“the ‘543 patent”),<sup>3</sup>  
2 7,141,461 (“the ‘461 patent”),<sup>4</sup> and 7,702,771 (“the ‘771 patent”).<sup>5</sup> Specifically, STI alleges that  
3 APC’s various products infringe claims 1-3, 6, and 15-17 of the ‘543 patent; claims 1, 3, and 8 of  
4 the ‘461 patent; and claims 15-17 of the ‘771 patent.

5 Like STI, APC manufactures intelligent power distribution devices. APC denies that its  
6 products infringe STI’s patents and has raised three defenses: (1) anticipation under 35 U.S.C.  
7 § 102; (2) obviousness under 35 U.S.C. § 103; and (3) non-infringement.

8 On April 13, 2010, the court issued a *Markman* order construing various disputed terms of  
9 the patents in suit. Doc. #163. Thereafter, APC filed the present motion for summary judgment.  
10 Doc. #287. On February 23, 2012, the court heard argument on the motion.

#### 11 **B. The Patents Generally<sup>6</sup>**

12 STI’s patents in suit (‘543, ‘771, and ‘461 patents) describe and relate to intelligent power  
13 distribution devices, also referred to as “intelligent plugstrips” or “PDUs.” Like an ordinary  
14 electrical plugstrip used in a home or office, intelligent plugstrips are primarily intended to  
15 distribute power from a wall outlet through an input power cord to a number of power outlets. But  
16 unlike ordinary plugstrips, intelligent plugstrips are intended for large scale applications such as  
17 commercial data centers and include several enhanced features. These enhanced features enable a  
18 user to locally or remotely control and monitor the power supply to connected appliances such as  
19 computers, servers, routers, and other electronic equipment through various internal relay controls.

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20 <sup>3</sup> A copy of the ‘543 patent is attached as Exhibit 1 to the declaration of Kristopher R. Kiel in support of APC’s  
21 motion for summary judgment. Doc. #288, Exhibit 1.

22 <sup>4</sup> A copy of the ‘461 patent is attached as Exhibit 2 to the declaration of Kristopher R. Kiel in support of APC’s  
23 motion for summary judgment. Doc. #288, Exhibit 2.

24 <sup>5</sup> The ‘771 patent is a continuation of the ‘543 patent. A copy of the ‘771 patent is attached as Exhibit 47 to the  
25 declaration of Kristopher R. Kiel in support of APC’s motion for summary judgment. Doc. #288, Exhibit 47.

26 <sup>6</sup> For a more thorough discussion of the features of the individual patents, see the court’s claim construction order  
(Doc. #163).

## 1     **II.     Legal Standard**

2             Summary judgment is appropriate only when the pleadings, depositions, answers to  
3     interrogatories, affidavits or declarations, stipulations, admissions, and other materials in the record  
4     show that “there is no genuine issue as to any material fact and the movant is entitled to judgment  
5     as a matter of law.” Fed. R. Civ. P. 56(a). In assessing a motion for summary judgment, the  
6     evidence, together with all inferences that can reasonably be drawn therefrom, must be read in the  
7     light most favorable to the party opposing the motion. *Matsushita Elec. Indus. Co. v. Zenith Radio*  
8     *Corp.*, 475 U.S. 574, 587 (1986); *County of Tuolumne v. Sonora Cmty. Hosp.*, 236 F.3d 1148,  
9     1154 (9th Cir. 2001).

10            The moving party bears the initial burden of informing the court of the basis for its motion,  
11     along with evidence showing the absence of any genuine issue of material fact. *Celotex Corp. v.*  
12     *Catrett*, 477 U.S. 317, 323 (1986). On those issues for which it bears the burden of proof, the  
13     moving party must make a showing that is “sufficient for the court to hold that no reasonable trier  
14     of fact could find other than for the moving party.” *Calderone v. United States*, 799 F.2d 254, 259  
15     (6th Cir. 1986); *see also Idema v. Dreamworks, Inc.*, 162 F. Supp. 2d 1129, 1141 (C.D. Cal. 2001).

16            To successfully rebut a motion for summary judgment, the non-moving party must point to  
17     facts supported by the record which demonstrate a genuine issue of material fact. *Reese v. Jefferson*  
18     *Sch. Dist. No. 14J*, 208 F.3d 736 (9th Cir. 2000). A “material fact” is a fact “that might affect the  
19     outcome of the suit under the governing law.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248  
20     (1986). Where reasonable minds could differ on the material facts at issue, summary judgment is  
21     not appropriate. *See v. Durang*, 711 F.2d 141, 143 (9th Cir. 1983). A dispute regarding a material  
22     fact is considered genuine “if the evidence is such that a reasonable jury could return a verdict for  
23     the nonmoving party.” *Liberty Lobby*, 477 U.S. at 248. The mere existence of a scintilla of  
24     evidence in support of the party’s position is insufficient to establish a genuine dispute; there must  
25     be evidence on which a jury could reasonably find for the party. *See id.* at 252.

1     **III. Discussion**

2             In its motion, APC seeks an order from the court (1) that asserted claims 1, 2, 3, and 6 of  
3     the '543 patent are invalid as anticipated under 35 U.S.C. § 102; (2) that asserted claims 15, 16,  
4     and 17 of both the '543 patent and the '771 patent are invalid as obvious under 35 U.S.C. § 103;  
5     and (3) that accused APC product designs, the AP7900 and AP8900, do not infringe asserted  
6     claims 1, 3, and 8 of the '461 patent. Doc. #287. The court shall address each argument below.

7             **A. Anticipation**

8             APC argues that claims 1, 2, 3, and 6 of the '543 patent are invalid as anticipated based on  
9     two pieces of prior art, the MasterSwitch VM ("MSVM") manufactured by APC and the RPC-21  
10    manufactured by non-party BayTech. Doc. #287.

11            In opposition, STI argues that the '543 patent is not anticipated because neither identified  
12    prior art design (1) contains a "current-related information display" in "current-related information-  
13    determining communication," or (2) is a "plugstrip" as that term is used and understood in the  
14    patent. Doc. #301.

15            **1. Anticipation Standard**

16            An issued patent is presumed valid by statute. 35 U.S.C. § 282. However, a patent may be  
17    held invalid as a matter of law if it is anticipated. 35 U.S.C. § 102. A patent is anticipated if a  
18    single reference, either printed publication or prior use, published more than one year before the  
19    date of the patent application, discloses, expressly or inherently, every limitation of the claim such  
20    that a person of ordinary skill in the art could practice the invention without experimentation.  
21    35 U.S.C. § 102(b); *see also Advanced Display Systems, Inc. v. Kent State Univ.*, 212 F.3d 1272,  
22    1282 (Fed. Cir. 2000).

23            The anticipating reference must describe the patented features "with sufficient clarity and  
24    detail" such that a person of ordinary skill in the field would recognize the existence of the patent  
25    features in the reference. *Crown Operations Int'l v. Solutia, Inc.*, 289 F.3d 1367, 1375 (Fed. Cir.  
26



1 2002). Moreover, "all of the elements and limitations of the claim must be shown in a single prior  
2 reference, arranged as in the claim." *Karsten Mfg. Corp. v. Cleveland Golf Co.*, 242 F.3d 1376,  
3 1383 (Fed. Cir. 2001).

## 4 **2. Person of Ordinary Skill in the Art**

5 A person of ordinary skill in the art is a person presumed to think "along the line of  
6 conventional wisdom in the art and is not one who undertakes to innovate, whether by patient, and  
7 often expensive, systematic research or by extraordinary insights." *Standard Oil Co. v. Am.*  
8 *Cyanamid Co.*, 774 F.2d 448, 454 (Fed. Cir. 1985). For purposes of this motion, the parties agree  
9 that a person of ordinary skill in the art is one who would have an electrical or computer  
10 engineering degree (or the equivalent industry experience) and at least one to three years of  
11 experience designing power distribution devices.

## 12 **3. Identified Prior Art**

13 APC identifies two pieces of prior art anticipating the '543 patent: the RPC-21<sup>7</sup> and the  
14 MSVM.<sup>8</sup> See Doc. #287. Both of these products were advertised and sold in 1999,<sup>9</sup> and as such,  
15 these designs pre-date the '543 patent application of December 8, 2000, by more than one year.

16 STI concedes that the RPC-21 and MSVM are prior art references for the purpose of the

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17  
18 <sup>7</sup> In 1999, non-party BayTech developed several different PDUs culminating in the RPC-21, a vertically mounted  
19 device which included certain common features of intelligent PDUs including (1) an input power cord; (2) a number of  
20 power outlets; (3) associated relays; (4) an LED display; and (5) the ability to remotely report current-related information  
to a technician over a network using a NIC component housed in a separate enclosure from the vertical outlet enclosure.  
See Doc. #287, Exhibit A, Claim Chart at 1-6; Doc. #288 Exhibit 16, North Depo.

21 <sup>8</sup> In the fall of 1999, APC developed an intelligent PDU similar to BayTech's RPC-21, the MSVM. Like the RPC-  
22 21, the MSVM was a vertical device with (1) an input cord; (2) a number of outlets; (3) a number of relays; (4) an LED  
23 display; and (5) a NIC component housed in a separate enclosure associated with the outlet component that allowed for  
reporting of current information over a network. See Doc. #287, Exhibit A, Claim Chart at 1-6; Doc. #288, Exhibit 4.  
Similar to the LED display of the RPC-21, the LED of the MSVM displayed current-related information, but displayed three  
different indicators: the LED lit up green when current was at a normal level, flashed green when current almost reached  
a potentially unsafe level, and lit up red when current exceeded that safe threshold level. *Id.*

24 <sup>9</sup> The RPC-21 was advertised as early as October 1999. Doc. #288, Exhibit 13, BayTech October 1999 Press  
25 Release; Exhibit 14, BayTech November 1999 Press Release. The MSVM was first exhibited at the Internet Service  
Provider Tradeshow in October 1999. See Doc. #288, Exhibit 8, McNally Depo., p.77-79.

1 court's anticipation analysis. Further, the parties do not distinguish between the MSVM and the  
2 RPC-21 in addressing APC's motion. Therefore, for the sake of simplicity, the court will analyze  
3 APC's anticipation arguments using the MSVM design.

#### 4 **4. Claim Language**

5 Independent claim 1 of the '543 patent discloses:

6 An electrical power distribution plugstrip connectable to one or more electrical loads  
7 in a vertical electrical equipment rack, the electrical power distribution plugstrip  
8 comprising in combination:

- 9 A. a vertical strip enclosure having a thickness and a length longer than a width of  
10 the enclosure;
- 11 B. a power input penetrating said vertical strip enclosure;
- 12 C. a plurality of power outputs disposed along a face of said length of the strip  
13 enclosure, each among the plurality of power outputs being connectable to a  
14 corresponding one of said one or more electrical loads;
- 15 D. a plurality of power control relays disposed in said vertical strip enclosure, each  
16 among said plurality of power control relays being connected to said power input  
17 and in independent power controlling communication with one or more  
18 corresponding power outputs among said plurality of power outputs;
- 19 E. a current-related information display disposed on said vertical strip enclosure in  
20 current-related information-determining communication with at least one among  
21 said power input and said plurality outputs; and
- 22 F. a current-related information reporting system associated with said vertical strip  
23 enclosure and being (i) in current-related information-determining  
24 communication with at least one among said power input and said plurality of  
25 power outputs, and (ii) connectable in current-related information transfer  
26 communication with a separate communications network distal from the  
electrical power distribution plugstrip.

18 Doc. #288, Exhibit 1, '543 patent, Col. 10:57-11:19. Claim 2 is a dependent claim of claim 1 and  
19 discloses:

20 The electrical power plugstrip of claim 1 further comprising at least one intelligent  
21 power section disposed in the vertical strip enclosure and in which is disposed at least  
one of the plurality of power control relays.

22 Doc. #288, Exhibit 1, '543 patent, Col. 11:20-24. Claim 3 is a dependent claim of both claims 1  
23 and 2 and discloses:

24 The electrical power plugstrip of claim 2 further comprising an external power  
25 manager application external to the vertical strip enclosure in network communication  
26 with the intelligent power section disposed in the vertical strip enclosure, whereby a user

1 of the of the external power manager may control power provided to selectable ones of  
2 said plurality of power outputs.

3 Doc. #288, Exhibit 1, '543 patent, Col. 11:25-31. Finally, claim 6 is a dependent claim of claim 1  
4 and discloses:

5 The electrical power plugstrip of claim 1 wherein the current-related information  
6 display is in current determining communication with all among the plurality of power  
7 outputs through at least one current sensing device.

8 Doc. #288, Exhibit 1, '543 patent, Col. 11:45-48.

### 9 **5. Independent Claim 1**

10 The plain language of claim 1 requires a power distribution plugstrip with the following  
11 limitations: (a) a vertical strip enclosure; (b) a power input; (c) a number of outlets; (d) remotely  
12 controllable relays associated with the outlets; (e) a current-related information display; and (f) a  
13 current reporting system. *See* Doc. #288, Exhibit 1, '543 patent, Col. 10:57-11:19.

14 In its motion for summary judgment, APC argues that the MSVM includes all these  
15 limitations. *See* Doc. #287. STI concedes that the MSVM meets limitations (a) through (d) of  
16 claim 1 but argues that the MSVM does not contain (1) a "current-related information display . . .  
17 in current-related information-determining communication" as required by limitation (e); and (2) a  
18 network device contained within the vertical strip enclosure as required by limitation (f). *See*  
19 Doc. #301. The court shall address each argument below.

#### 20 **a. Current-related Information Display**

21 In substance, limitation (e) requires that the device contain a display that conveys current-  
22 related information. *See* Doc. #288, Exhibit 1, '543 patent, claim 1(e). During the claim  
23 construction process, the court did not construe the phrase "current-related information-  
24 determining communication" because the parties agreed that "current-related information-  
25 determining communication" meant "communication in which current is measured." *See* Doc. #94,  
26 STI's Opening Claim Construction Brief, p.45-46; Doc. #122, APC's Response, p.39.

1 STI now argues that because “current-related information-determining communication”  
2 means “communication in which current is measured,” limitation (f) requires that the same  
3 measured current information be communicated to the display. STI’s interpretation requires a  
4 numerical value that is then transmitted and displayed, which, it argues, can only be accomplished  
5 through a digital display. Thus, at its core, STI’s interpretation of limitation (e) requires a digital  
6 display. As the MSVM used an LED display which did not, and could not, display a numerical  
7 value, STI argues that it cannot anticipate the ‘543 patent.

8 The court has reviewed the documents and pleadings on file in this matter and finds that,  
9 contrary to STI’s arguments, (1) limitation (e) does not require a digital display, and (2) the MSVM  
10 contains a “current-related information display . . . in current-related information-determining  
11 communication.” First, STI’s interpretation of limitation (e) is in direct contradiction to the court’s  
12 claim construction order. In that order, the court found that STI’s interpretation of “current-related  
13 information display” to mean a digital display that conveyed a numerical current value was  
14 contrary to the plain claim language and specification of the ‘543 patent. *See* Doc. #163, p. 21-22  
15 (“STI’s interpretation is contrary to the terms plain meaning and usage” and “would improperly  
16 limit the claim language based on the specification.”).

17 Second, STI’s attempt to salvage its argument by relying on the word “determining” in the  
18 claim phrase is equally unavailing. Both claims 1 and 15 of the ‘543 patent require a display in  
19 “current-related information-determining communication,” but while claim 1 discloses a display,  
20 claim 15 specifically discloses a digital display confirming that the “determining” language is not  
21 determinative for claim construction. STI’s attempt to limit claim 1 to require a digital display  
22 would render the specific “digital display” language in claim 15 meaningless. *See e.g., AllVoice*  
23 *Computing PLC v. Nuance Commc’ns, Inc.*, 504 F.3d 1236, 1247 (Fed. Cir. 2007) (“[C]laim  
24 differentiation takes on relevance in the context of a claim construction that would render  
25 additional, or different, language in another independent claim superfluous.”).

1 Finally, the court finds that the MSVM's LED display does, in fact, display determined  
2 current information. The crux of STI's argument is that the only kind of current information that  
3 can be determined is a numerical value. However, information other than a numerical value can be  
4 "determined." For example, one can determine whether something is hot or cold, without  
5 measuring a precise value of temperature. Similarly, a PDU device can determine that current is  
6 high or low, or above or below a certain threshold, and this determined information can then be  
7 communicated to an LED display.

8 Here, it is undisputed that the MSVM's LED determines and communicates a condition:  
9 when the PDU is operating in a normal current condition under a pre-programmed threshold value  
10 the LED displays a solid green indicator; when the PDU's current draw is approaching an overload  
11 condition the LED displays a flashing green indicator; and when the current level has passed the  
12 overload condition the LED displays a solid red indicator. *See* Doc. #310, Exhibit 6, Bors Depo.,  
13 p.47:13-18. Hence, the MSVM measures the level of input current, determines whether the  
14 measured input current is above or below a threshold level, and communicates this information to  
15 the LED. Based on this function, the court finds that the MSVM displays determined current-  
16 related information, and therefore, meets limitation (e) of the '543 patent.

17 **b. "Plugstrip"**

18 ~~STI also argues that the MSVM does not anticipate claim 1 of the '543 patent because it is~~  
19 ~~not a "plugstrip" as that term is used and understood in the '543 patent. STI contends that claim 1~~  
20 ~~of the '543 patent discloses a single piece vertical plugstrip that houses all identified parts~~  
21 ~~including the "current-related information reporting system" disclosed in limitation (f). Because it~~  
22 ~~is undisputed that the MSVM is a two-piece device that has a separate network component for~~  
23 ~~remote communication, STI argues it is not a "plugstrip." The court agrees.~~

24 ~~Claim 1 discloses "[a]n electrical power distribution plugstrip . . . comprising in~~  
25 ~~combination . . . (f) a current-related information reporting system associated with said vertical~~  
26

1 strip enclosure . . . .” Doc. #288, Exhibit 1, ‘543 patent, claim 1. The claim term “comprises” is  
2 presumed to mean “includes as a part of.” See *Crystal Semiconductor Corp. v. TriTech Microelects.*  
3 *Int’l, Inc.*, 246 F.3d 1336, 1348 (Fed. Cir. 2001) (“The transition ‘comprising’ creates a  
4 presumption that the recited elements are a part of the [claimed] device. . . .”). Thus, the use of the  
5 word “comprising” in claim 1 requires that all the limitations of the claim, including the current  
6 reporting system, are contained within the plugstrip.

7 In opposition, APC argues that limitation (f) only requires that the current-related  
8 information reporting system be “associated with” the vertical strip enclosure. APC contends that  
9 the use of the phrase “associated with” means that the reporting system need not reside in the  
10 plugstrip. However, the term “associated with” must be understood in the context of the entire  
11 patent. The ‘543 patent as a whole makes it clear that the “plugstrip” is a one-piece, fully-  
12 integrated device. First, the patent is entitled “Vertical-Mount Electrical Power Distribution  
13 Plugstrip.” Second, the summary of the invention refers repeatedly to the invention as a “power  
14 distribution plugstrip.” Third, the specification describes the device as a fully integrated plugstrip.  
15 See Doc. #288, Exhibit 1, ‘543 patent, Col. 10:17-18 (“All of PDU is preferably fully integrated  
16 within power distribution plugstrip . . . .”). Finally, the design of the plugstrip shown in Figure 1  
17 displays a one-piece plugstrip that houses all the design features, including the reporting system.  
18 See Doc. #288, Exhibit 1, ‘543 patent, Figure 1. Therefore, the court finds that claim 1 discloses a  
19 fully integrated plugstrip that contains the current-related information reporting system.

20 Because the reporting system of the MSVM is an external system connected to the plugstrip  
21 by a cable, it is not contained within the plugstrip. As such, the MSVM does not meet  
22 limitation (f). Therefore, the MSVM does not contain every limitation of claim 1 and cannot  
23 anticipate claim 1 as a matter of law. See *Karsten Mfg. Corp.*, 242 F.3d at 1383 (“[A]ll of the  
24 elements and limitations of the claim must be shown in a single prior reference, arranged as in the  
25 claim.”). Accordingly, the court shall deny APC’s motion for summary judgment on the issue of  
26

1 ~~anticipation.~~

2 **~~5. Remaining Claims~~**

3 ~~Claims 2, 3, and 6 of the '543 patent are dependent claims of claim 1. Because the court~~  
4 ~~finds that claim 1 is not anticipated by the MSVM as addressed above, these dependent claims are~~  
5 ~~also not anticipated.~~

6 **B. Obviousness**

7 In its motion for summary judgment, APC argues that asserted claims 15, 16, and 17 of  
8 both the '543 patent and '771 patent are invalid as obvious under 35 U.S.C. § 103. Specifically,  
9 APC argues that a person of ordinary skill in the art would have combined APC's prior art PDU,  
10 the MSVM, with APC's identified prior art digital displays, United States patents no. 5,650,771<sup>10</sup>  
11 ("the Lee patent") and 6,476,729<sup>11</sup> ("the Liu patent"), to arrive at STI's patented PDU designs in  
12 order to alleviate the known problem of alerting an end-user to a current overload condition.<sup>12</sup> See  
13 Doc. #287.

14 In opposition, STI argues that summary judgment is not appropriate because: (1) combining  
15 the MSVM with the digital displays disclosed in the Lee and Liu patents does not encompass the  
16 design disclosed in independent claim 15; (2) there is a disputed issue of material fact as to  
17 whether one skilled in the art would have had a reason to combine the prior art references; and  
18 (3) there is sufficient evidence of secondary considerations to support a finding of non-obviousness  
19 on summary judgment. See Doc. #301.

20 ~~The court has reviewed the documents and pleadings on file in this matter, as well as the~~

21 \_\_\_\_\_  
22 <sup>10</sup> A copy of the Lee patent is attached as Exhibit 22 the declaration of Kristopher R. Kiel in support  
of APC's motion for summary judgment. Doc. #288, Exhibit 22.

23 <sup>11</sup> A copy of the Liu patent is attached as Exhibit 23 to the declaration of Kristopher R. Kiel in support  
24 of APC's motion for summary judgment. Doc. #288, Exhibit 23.

25 <sup>12</sup> A current overload condition occurs when the level of current within the PDU begins to exceed a  
26 potentially safe level which, if not corrected, would lead to a current overload and cause the PDU, and attached  
devices to shut down.

1 ~~arguments and submissions by counsel at the February 23, 2012 hearing, and finds that there are~~  
2 ~~disputed issues of fact as discussed below precluding summary judgment that claims 15, 16, and 17~~  
3 ~~of the '543 and '771 patents are invalid as obvious under 35 U.S.C. §103. Accordingly, the court~~  
4 ~~shall deny APC's motion for summary judgment on this issue.~~

### 5 **1. Obviousness Standard**

6 Under the Patent Act, a patent may be deemed invalid as a matter of law "if the differences  
7 between the subject matter sought to be patented and the prior art are such that the subject matter  
8 as a whole would have been obvious at the time the invention was made to a person having  
9 ordinary skill in the art to which said subject matter pertains." 35 U.S.C. § 103(a).

10 A patented invention is obvious if a person of ordinary skill in the art would have had a  
11 reason to combine the particular elements or technologies in the way the claimed new invention  
12 does. *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007). The mere fact that prior references  
13 could be combined to reach the patented design does not render the resultant combination obvious  
14 absent a reason to combine the references in such a manner. *In re Mills*, 916 F.2d 680, 682 (Fed.  
15 Cir. 1990). This "apparent reason" can be shown by identifying some teaching, suggestion or  
16 motivation in the prior art to combine or modify the prior art in the manner identified in the claims.  
17 *KRS*, 550 U.S. at 418-19. However, an invention is not obvious "where vague prior art does not  
18 guide an inventor toward a particular solution." *Bayer Schering Pharma AG v. Barr Labs., Inc.*,  
19 575 F.3d 1341, 1347 (Fed. Cir. 2009). For purposes of summary judgment, the evidence must  
20 support particular findings "as to the reason the skilled artisan, with no knowledge of the claimed  
21 invention, would have selected these components for combination in the manner claimed." *In re*  
22 *Kotzab*, 217 F.3d 1365, 1371 (Fed. Cir. 2000).

23 Although the ultimate determination of obviousness under § 103 is a question of law, it is  
24 based on several underlying factual findings, including (1) the scope and content of the prior art;  
25 (2) the level of ordinary skill in the pertinent art; (3) the differences between the claimed invention  
26



1 and the prior art; and (4) evidence of secondary factors, such as commercial success, long-felt  
2 need, and the failure of others. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966). A defendant  
3 proffering the affirmative defense of obviousness bears the burden to prove the patent is obvious  
4 by clear and convincing evidence. *Eli Lilly & Co. v. Barr Labs., Inc.*, 251 F.3d 955, 962 (Fed. Cir.  
5 2001); *see also*, *Finnigan Corp. v. Int'l Trade Comm'n*, 180 F.3d 1354, 1365 (Fed. Cir. 1999).

## 6 **2. Prior Art**

7 For purposes of the present motion, the parties agree that the MSVM, Lee patent, and Liu  
8 patent are prior art references to STI's '543 and '771 patents. The parties further agree that both the  
9 Lee and Liu patents disclose a digital display to measure and display current on a power regulating  
10 device.<sup>13</sup>

## 11 **3. Person of Ordinary Skill in the Art**

12 As stated above, the parties agree that a person of ordinary skill in the art is one who would  
13 have an electrical or computer engineering degree (or the equivalent industry experience) and at  
14 least one to three years of experience designing power distribution devices.

## 15 **4. Claim Language**

16 Independent claim 15 - and thereby dependent claims 16 and 17 - contains the same  
17 limitations identified in claim 1 of the '543 patent except claim 15 also requires a *digital* current  
18 information display. Specifically, claim 15 discloses:

19 An electrical power distribution plugstrip connectable to one or more electrical  
20 loads in a vertical electrical equipment rack, the electrical power distribution  
plugstrip comprising in combination:

- 21 A. a vertical strip enclosure having a thickness, and a length longer than a width  
of the enclosure;
- 22 B. a power input penetrating said vertical strip enclosure;
- 23 C. a plurality of power outputs disposed along an area on a face of said length

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24 <sup>13</sup> The Lee patent, issued in 1997, discloses a design for an electrical socket containing digital displays to monitor  
various operating conditions including ambient temperature, voltage, and current. *See* Doc. #288, Exhibit 22, Abstract;  
Figure 1.

25 The Liu patent, issued in 2002, discloses a digital display power monitoring module that can be mounted into  
different types of power regulating devices, and measures various electrical parameters including current. *See* Doc. #288,  
26 Exhibit 23, Col. 1:44-46; Col. 4:47-5:2; Abstract Figure 1 and Figure 3.

1 of the strip enclosure, each among the plurality of power outputs being  
2 connectable to a corresponding one of said one or more electrical loads;

3 D. a plurality of power control relays disposed in said vertical strip enclosure,  
4 each among said plurality of power control relays being connected to said  
5 power input and to one or more corresponding power outputs among said  
6 plurality of power outputs;

7 E. a digital current information display disposed on another area of said vertical  
8 strip enclosure and adjacent to said plurality of outputs in current-determining  
9 communication with at least one among said power input and said power  
10 outputs; and

11 F. a plugstrip current reporting system (i) associated with the vertical strip  
12 enclosure (ii) in power information determining communication with at least  
13 one among said power input and said plurality of power outputs, and (iii)  
14 communicatingly connectable with a distal current reporting system through  
15 a communications network external to the electrical power distribution  
16 plugstrip.

17 Doc. #288, Exhibit 1, '543 patent, Col. 12:21-50. Claim 16 is a dependent claim of claim 15 and  
18 discloses:

19 The electrical plugstrip of claim 15 further comprising at least one intelligent  
20 power section disposed in the vertical strip enclosure and in which is disposed at  
21 least one of the plurality of power control relays.

22 Doc. #288, Exhibit 1, '543 patent, Col. 12:51-54. Claim 17 is also a dependent claim of both  
23 claims 15 and 16 and discloses:

24 The electrical power plugstrip of claim 16 further comprising, an external power manager  
25 application external to the vertical strip enclosure in network communication with the intelligent  
26 power section disposed in the vertical strip enclosure, whereby a user of the external power  
manager may control power provided to selectable ones of said plurality of power outputs.

Doc. #288, Exhibit 1, '543 patent, Col. 12:55-62.

Claims 15-17 of the '771 patent are virtually identical to those of the '543 patent, except  
that the '771 patent claims are broader in nature in that they are not limited to a "vertical" device.

See Doc. #288, Exhibit 47, '771 patent, Col. 12:19-57. Because the claims of the '771 patent are  
broader than those of the '543 patent, a finding that the '543 patent claims are not obvious

necessarily means that those of the '771 patent are likewise not obvious. ~~Thus, for purposes of this~~  
~~motion, the court analyzes obviousness with respect to the claims of the '543 patent only.~~

1                   **5. Combined Prior Art**

2           In order for a patented design to be obvious as a matter of law, the combination of all prior  
3 art references must include all the limitations of the patented design. See *KRS*, 550 U.S. at 418-  
4 419. As addressed in the previous section on anticipation, the court has found that the MSVM does  
5 not contain all the limitations of claim 1 of the '543 patent because the MSVM does not contain a  
6 current-related information reporting system contained within the vertical plugstrip enclosure. That  
7 finding carries over to the court's analysis of obviousness. Thus, for claim 15 of the '543 patent to  
8 be obvious, that additional limitation, along with the disclosure of a digital display, must be found  
9 in the Lee and Liu patents. Reviewing the Lee and Liu patents, the court finds that neither  
10 reference meets the "plugstrip" limitation of claim 1, and thus does not meet the same limitation of  
11 claim 15. Because the Lee and Liu patents do not disclose this limitation, combining these  
12 references with the MSVM does not reach the patented design of claim 15 of the '543 patent.  
13 Therefore, the patented design cannot be held invalid as obvious as a matter of law. Accordingly,  
14 the court shall deny APC's motion as to this issue. Nevertheless, the Court will consider the  
15 obviousness question in light of the remaining *Graham* factors.

16                   **6. Reason to Combine**

17           APC argues that a person of ordinary skill in the art would have combined the identified  
18 prior art references in order to solve the known problem of how to alert a user about a possible  
19 current overload condition. See Doc. #287. APC contends that during the relevant time period,  
20 those skilled in the art were aware of the problem of excessive current levels in a PDU and knew  
21 that adding a display showing current output could alert the end user that he was approaching a  
22 current overload condition.

23           It is undisputed that both an LED and a digital display were known design options to those  
24  
25  
26

1 in the art as a way to alert an end user of a possible current overload condition.<sup>14</sup> However, the  
2 relevant question before the court is not whether a digital display was a known option to alert an  
3 end-user to a current overload condition as APC contends, but whether one skilled in the art would  
4 have had a reason to use a digital display as a design alternative to an LED. See *In re Kotzab*, 217  
5 F.3d at 1371 (holding that for a patent to be obvious, a person of ordinary skill must have had a  
6 reason to use a particular component over another). As the problem of alerting an end-user to a  
7 current overload condition was already addressed in the market by the use of an LED, for the  
8 digital display to be obvious, a person of ordinary skill must have had a reason, articulated by clear  
9 and convincing evidence, to use the digital display in lieu of an LED.

10 Here, viewing the evidence in the light most favorable to STI, the court finds that there was  
11 no reason a person of ordinary skill would have combined a digital display into a vertical plugstrip  
12 solely to alert an end-user of a current overload condition. The evidence before the court  
13 establishes that an LED worked better than a digital display for alerting an end-user to a current  
14 overload condition. See Doc. #310, Exhibit 14, Rohr Depo., p.296:8-297:7 (testifying that a digital  
15 display was too "complex" and that an LED was the "best solution" to providing an end-user with  
16 a visual display). In particular, Alex North, the lead engineer at BayTech testified that he believed  
17 a display was "worthless" because an LED indicator provided technicians with all of the  
18 information required. Doc. #310, Exhibit 12, North Depo., p.72:10-73:13, p.146:17-147:7.  
19 Further, the evidence establishes that a digital display was more costly than an LED display to add  
20 to a vertical plugstrip and lead to additional unnecessary "complications" in product design.  
21 Doc. #310, Exhibit 14, Rohr Depo., p.296:8-297:7.

22 Finally, the evidence establishes that there were no design incentives to incorporate a

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23  
24 <sup>14</sup> By its nature, the LED of the MSVM (which lights up when a potentially unsafe current level has been reached)  
25 was directed to address this problem. Further, the Lee patent teaches that the digital display may be used to alert a user to  
26 a potential overload condition. Doc. #288, Exhibit 22, Col.1:42-47 ("The object of the present invention is to provide an  
electrical socket with a monitoring unit that is capable of monitoring operating conditions of the electrical socket and that  
can be used to alert the user in the event that a preset overload condition has been detected to help avert actual occurrence  
of an overload.").

1 digital display into a PDU. APC's expert Douglas Bors, in his expert report, stated that there was  
2 no need for a digital display because users had acceptable alternative means, including the use of  
3 manufacturers' "name plate" data, to determine appropriate equipment use. Doc. #314, Exhibit 1,  
4 Bors Expert Report, § 247. Thus, designers during that time thought the inclusion of a digital  
5 display was unnecessary. Based on the foregoing, the court concludes that there is no clear and  
6 convincing evidence establishing any reason for a person of ordinary skill to include a digital  
7 display in a PDU.

### 8 **7. Secondary Considerations of Non-Obviousness**

9 Before a court can make a finding of obviousness, and thereby hold a patent invalid, a court  
10 must determine whether there are any "secondary considerations" supporting a finding of  
11 nonobviousness. *KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. 398, 405 (2007). This is because  
12 "[s]econdary considerations 'may often establish that an invention appearing to have been obvious  
13 in light of the prior art was not.'" *Crocs, Inc. v. ITC*, 598 F.3d 1294, 1310 (Fed. Cir. 2010)  
14 (quoting *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 1538 (Fed. Cir. 1983)). Further,  
15 "[s]econdary considerations 'can be the most probative evidence of non-obviousness in the  
16 record, and enables the . . . court to avert the trap of hindsight.'" *Id.* (quoting *Custom Accessories,*  
17 *Inc. v. Jeffrey-Allan Indus., Inc.*, 807 F.2d 955, 960 (Fed. Cir. 1986)); *see also*, *Gambro Lundia AB*  
18 *v. Baxter Healthcare Corp.*, 110 F.3d 1573, 1579 (Fed. Cir. 1997) (citing *Stratoflex, Inc.*, 713 F.2d  
19 at 1538 ("[O]bjective indicia may often be the most probative and cogent evidence [of non-  
20 obviousness] in the record.")).

21 Secondary considerations relevant to an obviousness determination include: commercial  
22 success; skepticism in the field; copying by others; meeting a long felt, but unsolved need; and  
23 failure by others. *See e.g., KRS*, 550 U.S. at 405 (commercial success and long felt need);  
24 *Metabolite Labs. Inc. v. Lab. Corp. of Am. Holdings*, 370 F.3d 1354, 1368 (Fed. Cir. 2004) (initial  
25 skepticism); *Akami Techs., Inc. v. Cable & Wireless Servs., Inc.*, 344 F.3d 1186, 1196 (Fed. Cir.

1 2003) (copying); *Transocean Offshore Deepwater Drilling, Inc. v. Maersk Contractors USA, Inc.*,  
2 617 F.3d 1296, 1304-05 (Fed. Cir. 2010) (affirming non-obviousness based on commercial  
3 success, copying by others).

4 In further support of its opposition, STI argues that substantial evidence of secondary  
5 considerations establish that adding a digital display to a vertical plugstrip was not obvious. See  
6 Doc. #301. In particular, STI focuses on (1) the commercial success of its digital display PDUs; (2)  
7 subsequent copying by others, including APC; and (3) a long felt, but unsolved need of knowing  
8 the exact measured current value. As addressed below, the court finds that STI's evidence of  
9 secondary considerations supports the court's finding that claims 15-17 of the '543 and '771  
10 patents are not obvious.

11 **a. Commercial Success**

12 Initially, STI argues that the commercial success of its digital display PDUs establishes the  
13 products' novelty and non-obviousness.

14 Taken in the light most favorable to STI, the evidence indicates that STI's digital display  
15 PDUs have been commercially successful. First, the combined sales revenue for STI's PDUs  
16 containing a digital display have grown significantly over the last several years since their  
17 introduction in 2003. Doc. #13, Exhibit 41, Ewing Decl., ¶14, 17-18. Second, STI's products have  
18 carved out a large market share of the total intelligent PDU market. *Id.* at ¶21-22 (quoting Frost &  
19 Sullivan Award for Product Line Strategy through Competitive Growth Strategy Report).

20 Further, the evidence supports STI's contention that its commercial success is related  
21 directly to the use of a digital display in its PDUs. *Id.* at ¶ 21 (quoting Frost & Sullivan Award for  
22 Product Line Strategy through Competitive Growth Strategy Report) ("Server Technology, Inc.  
23 was the first company to bring input current monitoring (ICM) to the market with digital display  
24 indicators built into the Sentry enclosures to report the true RMS input.").

25 ///

1                   **b. Copying By Others**

2           STI also contends that its design of a digital display has now become the industry standard  
3 in vertical PDUs, further establishing the patented design's novelty and non-obviousness.

4           Viewing the evidence in the light most favorable to STI, the court finds that STI's digital  
5 display has now become the industry standard. See Doc. #311, Exhibit 1, Mares Decl., ¶23  
6 (“[V]ertical PDUs having a local display remote reporting, and switchable output design  
7 characteristics have become a de facto standard in the industry.”). Testimony of representatives  
8 from both APC and BayTech confirms this fact. APC's designer, Joe Kramer, testified that he was  
9 “not aware of a single competing product” available today without the local current display. Doc.  
10 #310, Exhibit 9, Kramer Depo., p.171:5-172:17. Further, BayTech's lead engineer Alex North  
11 testified that having a digital display is standard, and that BayTech “would be at a competitive  
12 disadvantage” if it did not have a digital current display. Doc. #310, Exhibit 12, North Depo.,  
13 p.239:22-240:4, p.303:8-17.

14                   **c. Long Felt, but Unsolved Need**

15           Finally, STI argues that its digital display solved the problem of allowing an end-user to  
16 maximize the capacity of each individual PDU which was a desired outcome. It is undisputed that  
17 prior art intelligent PDUs did not provide an end-user with a measured value of how much current  
18 was being drawn by the equipment connected to the PDU. It is further undisputed that end-users  
19 wishing to maximize PDU efficiency by connecting the maximum amount of equipment into each  
20 PDU would have to add pieces individually to see when a current overload condition was being  
21 approached. STI argues that its digital display allowed an end-user to locally determine how much  
22 current was being used and therefore maximize the total draw of the PDU without overloading the  
23 plugstrip and causing the connected equipment to fail.

24           STI argues that at the time it was necessary for end-users to know, particularly in large data  
25 centers, how much equipment could be connected to an individual PDU to maximize efficiency  
26

1 and save space. Data center technicians using conventional methods without readily visible digital  
2 displays would risk making significant and costly errors in determining power consumption and in  
3 building data centers. LED displays did not provide this information and discouraged users from  
4 adding additional equipment to the racks, whereas digital displays showed exactly how much  
5 current was being used. The digital display end user knew how much more current he could draw,  
6 and how many more pieces of equipment could be added before reaching an overload condition.  
7 The ability to monitor current levels locally allowed users to observe the amount of remaining  
8 capacity, and determine actual power consumption of the various network devices and storage  
9 equipment.

10 In short, reviewing the evidence in the light most favorable to STI, it appears that only STI  
11 solved the problem arising from the lack of a digital display: that technicians needed detailed  
12 information concerning the amount of current drawn by a PDU displayed directly on the PDU. It  
13 appears that STI alone discovered that a current-related information display could be used to  
14 maximize rack capacity.

### 15 C. Patent Non-Infringement ['461 Patent]

16 In its motion for summary judgment, APC argues that its accused product designs, the  
17 AP7900 and AP8900, do not infringe claims 1, 3, and 8 of the '461 patent because these designs  
18 do not: (1) include a current sensor in communication with a communication bus; (2) display  
19 "power-related information;" (3) monitor or display parameters at the "output" level; or (4) include  
20 more than one intelligent power section.

21 In opposition, STI argues that there are disputed issues of material fact concerning the  
22 accused designs that preclude summary judgment on the issue of non-infringement.

#### 23 1. Patent Infringement Standard

24 A district court analyzes a patent infringement claim in two steps. First, the court construes  
25 the claims as a matter of law, then the court applies the properly construed claims to the accused  
26



1 invention. *K-2 Corp. v. Salomon S.A.*, 191 F.3d 1356, 1362 (Fed. Cir.1999); *EMI Group N.*  
2 *America, Inc. v. Intel Corp.*, 157 F.3d 887, 891 (Fed. Cir. 1998). Infringement can occur either  
3 literally or under the doctrine of equivalents. *Kahn v. Gen'l Motors Corp.*, 135 F.3d 1472, 147-78  
4 (Fed. Cir. 1998). Literal infringement occurs when every limitation set forth in a patent claim is  
5 found in an accused product. *Laitram Corp. v. Rexnord, Inc.*, 939 F.2d 1533, 1535 (Fed. Cir.  
6 1991). The smallest deviation from the literal claim language precludes infringement. *Telemac*  
7 *Cellular Corp. v. Topp Telecom, Inc.*, 247 F.3d 1316, 1330 (Fed. Cir. 2001).

8 Under the doctrine of equivalents, infringement “requires a showing that the difference  
9 between the claimed invention and the accused product [is] insubstantial.” *Sumbo v. Eastman*  
10 *Outdoors, Inc.*, 508 F.3d 1358, 1364 (Fed. Cir. 2007) (citing *Graver Tank & Mfg. Co. v. Linde Air*  
11 *Prods. Co.*, 339 U.S. 605, 608 (1950)). This is accomplished by demonstrating on a limitation by  
12 limitation basis that the accused product performs substantially the same function in substantially  
13 the same way and with substantially the same result as each limitation of the patented product. *Id.*

## 14 **2. APC’s Allegedly Infringing Devices**

15 APC’s AP7900 and AP8900 product designs are for intelligent PDUs. The AP7900  
16 product design has been sold since 2003 and the AP8900 product design since 2010. Both designs  
17 include a power input, a number of relay controlled outlets, a display, and the ability to remotely  
18 monitor and control the devices over a network. But the AP7900 and AP8900 product designs  
19 differ with respect to which electric parameters the devices measure and display. The AP7900  
20 design measures and displays information solely about current. Doc. #293, Exhibit 45, Horenstein  
21 Decl., Exhibit 2 at 16-17. The AP8900 design measures and displays both current and power. *Id.*

## 22 **3. Claim Language**

23 Independent claim 1 of the ‘461 patent discloses:

24 A remotely manageable power management output strip comprising in  
25 combination:

26 A. a power strip housing;

B. a plurality of power inputs disposed in the power strip housing;

- C. a first plurality of power outputs disposed in the power strip housing, each among the first plurality of power outputs being connectable to one or more electrical loads external to the power strip housing and connected to a first power input among the plurality of power inputs;
- D. a second plurality of power outputs disposed in the power strip housing, each among the second plurality of power outputs being connectable to one or more electrical loads external to the power strip housing and connected to a second power input among the plurality of power inputs;
- E. a communications bus disposed in the power strip housing;
- F. a plurality of power control sections disposed in the power strip housing, each said power control section being in communication with the communications bus and thereby in power controlling communication with one or more corresponding power outputs among the first or second plurality of power outputs;
- G. a communications system disposed in the power strip housing, being in communication with said communications bus, and having a communications processor system in communication with (i) said communications bus; (ii) said plurality of power control sections through the communications bus; (iii) a communications port connectable to an external communications link external to the power strip housing;
- H. a display disposed in the power strip housing in communication with the communications bus; and
- I. a current determining section disposed in the power strip housing in communication with the communications bus, whereby the current determining section may communicate power-related information to said display.

Doc. #288, Exhibit 2, '461 patent, Col. 21:44-22:17. Claim 3 is a dependent claim of claim 1 and discloses:

The remotely manageable power management output strip of claim 1 wherein each among the plurality of power control sections includes a power-on status determination circuit, whereby the power-on status determination circuit may report power-on status of said corresponding power output through said communications bus.

Doc. #288, Exhibit 2, '461 patent, Col. 22:24-29. Finally, independent claim 8 discloses:

A remotely manageable power management output strip of the type useable to remotely control, or assess information relating to, power provided to external electrical loads from a manager location distal from the external electrical loads, the remotely manageable power management output strip comprising in combination:

- A. a power strip housing;
- B. a power input disposed in the power strip housing;
- C. a plurality of power outputs disposed in the power strip housing, each said power output being connectable to an electrical load external to the power-strip housing;
- D. at least one intelligent power section disposed in the power strip housing in

1 power controlling communication with at least one corresponding power  
2 output among said plurality of power outputs;

3 E. a network communications module (i) having memory and a transfer-control-  
4 protocol/Internet Protocol network interface application system residing in  
5 the memory and providing a web page interface, and (ii) being disposed in the  
6 power strip housing in independent communication with the intelligent power  
7 sections and in communication with at least a first external network  
8 communications port; and

9 F. a current display mounted in association with the power strip housing in  
10 current-determining communication with at least one among the plurality of  
11 power outputs; whereby an external power manager and the network  
12 communications module may exchange, through the first external network  
13 communications port and an external network link, information relating to the  
14 intelligent power sections in the power strip housing.

15 Doc. #288, Exhibit 2, '461 patent, Col. 22:53-23:16.

#### 16 4. Claim 1

17 In its motion, APC argues that its AP7900 and AP8900 product designs do not literally  
18 infringe claim 1 of the '461 patent because these designs do not have a "current determining  
19 section" in communication with a "communications bus." See Doc. #287. APC also argues that the  
20 AP7900 design does not literally infringe claim 1 because it does not display power-related  
21 information. The court shall address both arguments below.

##### 22 a. Current-determining Section

23 The plain language of limitation (i) of claim 1 requires a current determining section in  
24 communication with a communications bus. Doc. #288, Exhibit 2, '461 patent, Col. 22:15-17.  
25 APC argues that its accused designs do not have a current determining section that is in  
26 communication with a communications bus because STI, in its final infringement contentions,  
identified the current determining section as only the "load sensors" or "load sensing toroids"<sup>15</sup> of  
the accused designs. Doc. #290, Exhibit 32 at C-5. It is undisputed that the current sensing toroids  
are not "in communication" with the communications bus as no information passes directly from  
the toroids to the communications bus. Therefore, APC argues there is no literal infringement of

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<sup>15</sup> The toroids are the component within the APC designs that senses current.

1 claim 1.

2 In opposition, STI argues that the accused designs include a “current determining section”  
3 in communication with a “communications bus” because the current determining section is more  
4 than just the current sensing toroids. STI argues that the current determining section also  
5 comprises the signal conditioner, the analog-to-digital converter, and the microprocessor; all of  
6 which are housed on the PCB board with the current sensing toroids. STI argues that there is  
7 evidence that the PCB board and its components are in communications with the communications  
8 bus, and therefore, APC’s accused designs literally infringe claim 1.

9 In reviewing STI’s arguments in opposition, the court finds that STI effectively seeks to  
10 amend its final infringement contentions to add these additional components. The Patent Rules  
11 allow a plaintiff to modify its infringement theory upon a showing of “good cause.” N.D. Cal.  
12 Patent Local R. 3-7 (2001); *cf.* D. Nev. Patent Local R. 16.1-12 (2011).

13 Here, the court finds that there is no good cause to allow STI to amend its final  
14 infringement contentions concerning limitation (i) to include the additional components in the  
15 PCB board. First, STI has waited over four years to identify these components as part of the  
16 infringing design even though STI knew all of these components were on the PCB board at the  
17 time it filed its final infringement contentions. Second, expert discovery has already concluded in  
18 this action. Allowing amendment would require also allowing expanded expert discovery and  
19 increased litigation costs. Finally, the new components were only identified in response to APC’s  
20 motion for summary judgment after STI conceded that the current sensing toroids alone were not  
21 in communication with a communications bus and thus, did not infringe claim 1. Therefore, the  
22 court finds there is no good cause to allow STI to amend its final infringement contentions  
23 concerning claim 1 of the ‘461 patent. As such, the court finds that, as addressed above, APC’s  
24  
25  
26

1 AP7900 and AP8900 product designs do not literally infringe claim 1 of the '461 patent.<sup>16</sup>

2 Accordingly, the court shall grant APC's motion for summary judgment on this issue.

3 **b. Power-related Information<sup>17</sup>**

4 APC also argues that its AP7900 design does not literally infringe limitation (i) of claim 1  
5 because it does not display "power-related information." The court agrees. It is undisputed that the  
6 AP7900 design displays only current-related information. In the court's claim construction order,  
7 the court found that current and power are distinct concepts and that current alone is insufficient to  
8 determine power. Specifically, the court construed the terms "power information" from the  
9 '543 patent and "power-related information" from the '461 patent to mean "information necessary  
10 to quantify or describe power, rather than current alone." Doc. #163, p. 25. A current only display,  
11 as in the AP7900 design, does not meet this limitation. Accordingly, based on the court's claim  
12 construction of these terms, the court holds that the AP7900 design does not infringe claim 1 of the  
13 '461 patent.

14 In opposition, STI argues that the court's construction of "power information" and "power-  
15 related information" should be reconsidered. STI contends that the court's construction rendered  
16 the term "related" in "power-related information" superfluous. In STI's opinion, once the court  
17 construed the term "power information" narrowly, it became necessary to differentiate between the  
18 meaning of "power information" and "power-related information." Construing the two phrases  
19 identically discounts the word "related." STI concludes that the construction of the term "power-  
20 related information" should be revised to mean: "information related to power, namely, at least one  
21 of power, voltage or current."

22 The court disagrees and finds that reconsideration of the court's claim construction order is

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24 <sup>16</sup> Because claim 3 is dependent on claim 1, the court's finding that the AP7900 and AP8900 designs do not  
25 literally infringe claim 1 necessarily means that these designs also do not literally infringe claim 3 of the '461 patent.

26 <sup>17</sup> This section applies only to the AP7900 product as APC concedes that the AP8900 product displays power-  
related information.

1 not warranted. First, during claim construction proceedings, STI offered the same argument that  
2 “power information” and “power-related information” are broad enough to include the concept of  
3 current. However, the court rejected that argument. *See* Doc. #163, p. 25 (“Permitting current  
4 information to satisfy the power information limitation” in STI’s claims “would eliminate the  
5 distinction suggested by the plain language of the claims.”).

6 Second, in support of its request for reconsideration, STI now asserts that “power  
7 information” and “power-related information” must necessarily have a different scope because the  
8 word “related” only appears in one of the terms. This position is entirely inconsistent with STI’s  
9 position during claim construction. There, STI proposed the same construction for both of these  
10 terms, and presented the same analysis treating the terms as identical in scope. *See* Doc. #163, p.  
11 25, fn. 9. Further, STI’s reliance on the word “related” as a basis to expand the scope of “power-  
12 related information” would again eliminate the distinction between power and current suggested  
13 by STI’s patent claims. As noted above, some of STI’s claims require “current” or “current-  
14 related” information, and other claims specifically require “power” or “power-related”  
15 information. This language clearly suggests a difference between current and power, whether the  
16 claim language at issue is “power” information or “power-related” information, and thus, the term  
17 “related” is not determinative of the claims.

18 In light of the above, the court declines to reconsider its earlier claim construction of the  
19 terms “power information” and “power-related information.” Therefore, the court finds that the  
20 AP7900 design also does not infringe claim 1 of the ‘461 patent because it does not display  
21 “power-related information.”

## 22 **5. Claim 8**

23 In its motion, APC argues that its designs do not literally infringe claim 8 of the ‘461  
24 patent. Specifically, APC argues that its designs: (1) contain a display of input, rather than output,  
25 current; and (2) do not contain “intelligent power sections.” The court shall address each argument  
26

1 below.

2 **a. Display of Outputs**

3 Limitation (f) of claim 8 discloses in relevant part: “a current display mounted in  
4 association with the power strip housing in current-determining communication with at least one  
5 among the plurality of power outputs.” Doc. #288, Exhibit 2, ‘461 patent, Col. 23:13-16. Based on  
6 the plain language limitation (f) requires that the display communicates with at least one power  
7 output. It is undisputed that APC’s accused designs do not communicate with any power output,  
8 and instead only display total input current. Accordingly, the court finds that the accused products  
9 do not literally infringe claim 8 because they do not have a current display “in current-determining  
10 communication with at least one among the plurality of power outputs the output.”

11 In opposition, STI argues that even though the accused designs do not literally infringe  
12 limitation (f), the accused designs infringe under the doctrine of equivalents. *See* Doc. #301. The  
13 equivalent at issue here is whether a display in current determining communication with the power  
14 input is equivalent to communication with at least one of the power outputs.

15 The function of limitation (f) is to display the amount of current flowing to the connected  
16 devices. There is evidence that the APC designs display total aggregate current being used by the  
17 PDU. *See* Doc. #310, Exhibit 3; Doc. #309, Exhibit 9. That is the same function served by  
18 limitation (f). There is also evidence before the court that APC’s designs serve that function in  
19 substantially the same way as described in claim 8. *See* Doc. #320, Exhibit 15, Aucoin Decl., ¶ 45.  
20 Even though APC’s designs measure aggregate input current, that measured value, minus some  
21 negligible draw from internal parts, is equal to the aggregate output current flowing to the  
22 connected devices. *Id.* at ¶¶ 41-43. Thus, the result of both designs is that a user has a measured  
23 value of all current flowing to the connected devices. *Id.* at ¶¶ 40-41.

24 Applying the doctrine of equivalents to this claim, and viewing the evidence in the light  
25 most favorable to STI, the court finds that there is a genuine issue of material fact concerning  
26

1 whether the APC accused products infringe limitation (f). Accordingly, the court shall deny APC's  
2 motion for summary judgment as to this issue.

3 **b. Intelligent Power Sections**

4 When the '461 patent issued, limitation (e) and (f) required a design that included  
5 "intelligent power sections." See Doc. #288, Exhibit 2, '461 patent, Claim 8(e) and (f). The court  
6 construed "intelligent power section" to require a microcontroller and associated outlet/relays  
7 combinations. See Doc. #163. It is undisputed that APC's designs only contain a single  
8 microcontroller and therefore, do not include "intelligent power sections" as required by  
9 limitations (e) and (f). Thus, the court finds that the AP7900 and AP8900 designs do not literally  
10 infringe claim 8 of the '461 patent.

11 In opposition, STI argues that a certificate of correction, issued by the patent office on April  
12 10, 2007, revised limitations (e) and (f) to require only a single "intelligent power section." The  
13 Federal Circuit has held that the issuance of a certificate of correction applies only to causes of  
14 action that accrue after the certificate issues. *Southwest Software, Inc. v. Harlequin Inc.*, 226 F.3d  
15 1280, 1294 (Fed. Cir. 2000) ("for causes arising after the PTO issues a certificate of correction, the  
16 certificate of correction is to be treated as part of the original patent-i.e., as if the certificate had  
17 been issued along with the original patent."). But, "each act of infringement gives rise to a separate  
18 cause of action." *E.I. du Pont de Nemours & Co. v. MacDermid Printing Solutions, L.L.C.*, 525  
19 F.3d 1353, 1362 (Fed. Cir. 2008). Thus, STI seeks to revise its final infringement contentions  
20 regarding claim 8 to refer to the revised language in the certificate of correction issued on the '461  
21 patent.

22 The court has reviewed the documents and pleadings on file in this matter and finds that  
23 there is not good cause to allow STI to amend its final infringement contentions to include the  
24 revised language of claim 8. The court notes that STI was obligated to amend its pleadings to  
25 assert the '461 patent as corrected or in some way alert APC and the Court that it was proceeding  
26



1 under the patent as corrected as soon as the certificate of correction was issued. *See LG Elecs., Inc.*  
2 *v. Quanta Comp., Inc.*, 566 F. Supp. 910, 912-13 (W.D. Wis. 2008) (“any certificate of correction  
3 [patentee] received from the patent office would not be effective for the purpose of enforcement  
4 unless it filed a new lawsuit or amended its complaint”). In *LG Electronics*, the court refused to  
5 allow a patentee to raise a corrected version of the patent in light of the fact that the plaintiff  
6 waited three months after it had received a Certificate of Correction and raised the corrected  
7 version of the patent three days before the deadline for filing summary judgment motions.

8 Here, STI’s actions are even more egregious in that it failed to raise its corrected claim at  
9 any point during the four years of this litigation, and did so only in response to APC’s motion for  
10 summary judgment. Indeed, at no point in this litigation did STI seek to amend its complaint to  
11 add the altered ‘461 patent to the list of STI patents asserted against APC even though STI filed an  
12 amended complaint after having the certificate of correction issued. *See* Doc. #185. Rather, in  
13 litigating this case between 2007 and 2011, STI consistently asserted only the original claim 8 and  
14 completely ignored the revised claim 8. For example, STI relied on the original claim 8 in its  
15 pleadings (Doc. ##21, 185), its claim construction documents (Doc. #94, Exhibit C, original  
16 ‘461 patent), its preliminary and final infringement contentions (Doc. #284, App. 48 at “Exhibit  
17 C,” p. 5-7; Doc #290, Ex. 32 at “Exhibit C,” p. 10-11), and even in the exhibits that STI presented  
18 to the court in support of its own motion for summary judgment (Doc. #281, App. 16, original  
19 ‘461 patent).

20 Thus, the court finds that STI relied on the original claim 8 throughout this litigation. There  
21 is no good cause to allow STI to amend its contentions after more than four years of litigation. To  
22 allow STI to raise the revised claim 8 in this litigation at this stage, and solely in response to a  
23 motion for summary judgment, would be fundamentally unfair and prejudicial to APC. Thus, the  
24 court holds that STI is precluded from relying on the corrected claim 8 language in this litigation  
25 and the court shall deny STI’s request to amend its final infringement contentions to add in the  
26

1 revised claim 8 language.

2 Because it is undisputed that APC's accused designs do not have "intelligent power  
3 sections," APC is entitled to summary judgment that the AP7900 and AP8900 designs do not  
4 literally infringe limitations (e) and (f) of claim 8 of the '461 patent. Accordingly, the court shall  
5 grant APC's motion for summary judgment on this issue.

6 **III. Conclusion**

7 In conclusion, the court finds: (1) ~~that asserted claims 1, 2, 3, and 6 of the '543 patent are~~  
8 ~~not invalid as anticipated under 35 U.S.C. § 102; (2) that asserted claims 15, 16, and 17 of both the~~  
9 ~~'543 patent and the '771 patent are not invalid as obvious under 35 U.S.C. § 103; (3) that the~~  
10 AP7900 and AP8900 designs do not literally infringe claims 1 and 3 of the '461 patent; and [2]  
11 (4) that the AP7900 and AP8900 designs do not literally infringe claim 8 of the '461 patent.

12  
13 IT IS THEREFORE ORDERED that defendant's motion for summary judgment  
14 (Doc. #287) is addressed in accordance with this AMENDED and RE-ISSUED ORDER.

15 IT IS SO ORDERED.

16 RE-ISSUED this 12<sup>th</sup> day of May, 2017.

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18   
19 LARRY R. HICKS  
20 UNITED STATES DISTRICT JUDGE  
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26

# EXHIBIT 2

1  
2  
3  
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5  
6 UNITED STATES DISTRICT COURT  
7 DISTRICT OF NEVADA

8 \* \* \*

9 SERVER TECHNOLOGY, INC., )  
10 Plaintiff and Counterdefendant, ) 3:06-CV-00698-LRH-VPC  
11 v. )  
12 AMERICAN POWER CONVERSION ) AMENDED ORDER  
13 CORPORATION, )  
14 Defendant and Counterclaimant. )  
\_\_\_\_\_ )

15 Before the court are plaintiff Server Technology, Inc.'s ("STI") motion for a permanent  
16 injunction (Doc. #618<sup>1</sup>), and motion for supplemental damages and prejudgment interest  
17 (Doc. #619). Defendant American Power Conversion Corp. ("APC") filed oppositions to both  
18 motions (Doc. ##630, 631) to which STI replied (Doc. ##636, 637).

19 Also before the court is defendant APC's motion for judgment as a matter of law, or in the  
20 alternative, motion for a new trial. Doc. #626. STI filed an opposition (Doc. #635) to which APC  
21 replied (Doc. #638).[<sup>2</sup>]

22 **I. Facts and Procedural History**

23 This action has an extensive factual and procedural history. In brief, plaintiff STI  
24 \_\_\_\_\_

25 <sup>1</sup> Refers to the court's docket number.

26 <sup>2</sup> [This is an amended and re-issued order of the court's now-vacated original order granting in-part and denying in-part the parties' post-trial motions (Doc. #651).]

1 manufactures intelligent power distribution units (“PDUs”). In 2006, STI brought the underlying  
2 patent infringement action against defendant APC alleging that APC’s AP7900 and AP8900 series  
3 of products infringed two of STI’s patents: United States Patents numbers 7,043,543 (“the ‘543  
4 patent”), and 7,702,771 (“the ‘771 patent). Doc. #1.

5 Like STI, APC manufactures intelligent PDUs. APC denied that its AP7900 and AP8900  
6 products infringed STI’s patents and raised two affirmative defenses. First, APC alleged that STI’s  
7 ‘543 and ‘771 patents were invalid as obvious under 35 U.S.C. § 103. Second, APC alleged that  
8 STI engaged in inequitable conduct before the Patent Office during the prosecution of both patents.

9 Between May 12 and May 27, 2014, a jury trial was held on the issues of infringement and  
10 invalidity. On May 29, 2014, the jury returned a verdict finding that APC’s AP7900 and AP8900  
11 products infringed claim 15 of both the ‘543 and ‘771 patents. Doc. #590. The jury also made an  
12 advisory finding that STI’s ‘543 and ‘771 patents were not invalid as obvious. *Id.* As part of this  
13 advisory finding, the jury made several factual findings concerning secondary considerations of  
14 non-obviousness. *Id.*<sup>3]</sup>

15 From May 28 through May 30, 2014, following the jury trial, the court conducted a bench  
16 trial on APC’s inequitable conduct claim. On August 8, 2014, after additional post-trial briefing the  
17 court entered final findings of fact and conclusions of law on APC’s inequitable conduct claim.  
18 Doc. #613. In that order, the court found that neither STI CEO Carrol Ewing (“Mr. Ewing”) nor  
19 STI patent prosecution Attorney Robert Ryan (“Attorney Ryan”) engaged in inequitable conduct  
20 before the Patent Office during the prosecution of the ‘543 and ‘771 patents. *Id.* The same day, the  
21 court issued a separate order finding that the ‘543 and ‘771 patents were not invalid as obvious  
22  
23

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24 <sup>3</sup> [The jury’s verdict has subsequently been vacated pursuant to the court’s February 23, 2017 vacate order.  
25 Doc. #691. An amended verdict reflecting the Federal Circuit’s decision in *Server Tech., Inc. v. Am. Power Conversion*  
26 *Corp.*, 657 Fed. Appx. 1030 (Fed. Cir. 2016) is forthcoming and those amendments, particularly as they relate to the finding  
of infringement for the AP7900 products and the advisory finding on the issue of obviousness, are reflected in the amended  
order.]

1 under 35 U.S.C. § 103. Doc. #615.[<sup>4</sup>]

2 After entry of final judgment, the parties filed the present post-trial motions.

3 **II. Claimed Inventions**

4 **A. Claim 15 - '543 Patent (Col. 12:21-50)**

5 An electrical power distribution plugstrip connectable to one or more electrical loads in a  
6 vertical electrical equipment rack, the electrical power distribution plugstrip comprising in  
7 combination:

- 8 A. a vertical strip enclosure having a thickness, and a length longer than a width of the  
9 enclosure;
- 10 B. a power input penetrating said vertical strip enclosure;
- 11 C. a plurality of power outputs disposed along an area on a face of said length of the strip  
12 enclosure, each among the plurality of power outputs being connectable to a  
13 corresponding one of said one or more electrical loads;
- 14 D. a plurality of power control relays disposed in said vertical strip enclosure, each among  
15 said plurality of power control relays being connected to said power input and to one or  
16 more corresponding power outputs among said plurality of power outputs;
- 17 E. a digital current information display disposed on another area of said vertical strip  
18 enclosure and adjacent to said plurality of outputs in current-determining  
19 communication with at least one among said power input and said power outputs; and
- 20 F. a plugstrip current reporting system (i) associated with the vertical strip enclosure (ii) in  
21 power information determining communication with at least one among said power  
22 input and said plurality of power outputs, and (iii) communicably connectable with a  
23 distal current reporting system through a communications network external to the  
24 electrical power distribution plugstrip.

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25 <sup>4</sup> [The court's order on the issue of obviousness has likewise been vacated pursuant to the court's February 23,  
26 2017 order. Doc. #691.]

1           **B. Claim 15 - '771 Patent (Col. 12:19-46)**

2           An electrical power distribution plugstrip connectable to one or more electrical loads in an  
3           electrical rack, the electrical power distribution device comprising in combination:

- 4           A. an enclosure having length that is longer than a width of the enclosure;  
5           B. a power input penetrating the enclosure;  
6           C. a plurality of power outputs disposed along an area on a face of said length of the  
7           enclosure, each among the plurality of power outputs being removably connectable to a  
8           corresponding one of said one or more electrical loads;  
9           D. a plurality of power control relays disposed in the enclosure, each among said plurality  
10          of power control relays being connected to said power input and to one or more  
11          corresponding power outputs among said plurality of power outputs;  
12          E. a digital current information display disposed on another area of the enclosure in current  
13          determining communication with at least one among said power input and said plurality  
14          of power outputs; and  
15          F. a current information reporting system (i) associated with the enclosure (ii) in power  
16          information determining communication with at least one among said power input and  
17          said plurality of power outputs, and (iii) communicably connectable with a distal  
18          current reporting system through a communications network external to the electrical  
19          power distribution device.

20       **III. STI's Motion for a Permanent Injunction (Doc. #618)**

21       In its first post-trial motion, STI moves for entry of a permanent injunction prohibiting  
22       APC from selling the ~~AP7900~~ and AP8900 products, as well as any other PDU that is "not  
23       colorably different" from the ~~AP7900~~ and AP8900 products. *See* Doc. #618. In the alternative, if  
24       an injunction is not issued, STI seeks an order from the court ordering a compulsory license and  
25       establishing an ongoing royalty rate of 15% - or three times the 5% reasonable royalty rate  
26       established by the jury - for any future sales of APC's ~~AP7900~~ and AP8900 products. *Id.*

1 A permanent injunction is an “extraordinary remedy that may only be awarded upon a clear  
2 showing that [the moving party] is entitled to such relief.” *Id.* (citing *Mazurek v. Armstrong*, 520  
3 U.S. 968, 972 (1997) (per curiam)). A patent holder seeking a permanent injunction after a finding  
4 of infringement must satisfy a four-factor test: (1) irreparable harm; (2) inadequacy of monetary  
5 damages; (3) the balance of hardships is in the patent holder’s favor; and (4) that the public interest  
6 would not be disserved by a permanent injunction. *eBay, Inc. v. MercExchange, LLC*, 547 U.S.  
7 388, 391 (2006). As addressed below, the court finds that STI is not entitled to the extraordinary  
8 remedy of a permanent injunction in this action.

9 **A. Irreparable Injury**

10 As part of an irreparable injury analysis, courts regularly examine three main  
11 considerations: (1) direct competition between the parties; (2) the patentee’s loss of market share  
12 due to the infringement; and (3) loss of goodwill by the patentee. *See, e.g., Presidio Components*  
13 *Inc. v. Am. Tech. Ceramics Corp.*, 702 F.3d 1351, 1362 (Fed. Cir. 2012) (stating that direct  
14 competition in the same market strongly supports the potential for irreparable harm absent an  
15 injunction); *i4i Ltd. P’ship v. Microsoft Corp.*, 598 F.3d 831, 861 (Fed. Cir. 2010) (finding that  
16 harm to a patentee’s market share, revenues, and brand recognition is relevant for determining  
17 whether the patentee has suffered an irreparable injury); *Celsis in Vitro, Inc. v. CellzDirect, Inc.*,  
18 664 F.3d 922, 930 (Fed. Cir. 2012) (holding that loss of goodwill, damage to reputation, and loss  
19 of business opportunities are all valid grounds for finding irreparable harm).

20 The court has reviewed the documents and pleadings on file in this matter and finds that  
21 STI has established that continued infringement by APC will cause harm to STI’s business. First, it  
22 is undisputed that STI and APC compete directly in the limited rack-mounted PDU market. In fact,  
23 at trial, both STI’s and APC’s witnesses acknowledged that both companies are direct competitors  
24 and have the largest market share of the rack-mounted PDU market. *See* Doc. #599, Pat Johnson  
25 Trial Testimony, p.1462:5-23, 1501:11-23; Doc. #602, Julie Davis Trial Testimony, p.2301:11-17.  
26 Second, as APC and STI directly competed for the same limited sales in the market, continued



1 infringement by APC will cause STI to lose customers and market share to APC as APC sells its  
2 infringing PDUs at a lower price than STI's patented products.<sup>5</sup> Therefore, the court finds that STI  
3 has established irreparable harm resulting from APC's continued infringement.

4       However, while there is no question that STI and APC compete to sell PDUs in the market,  
5 STI has competed in this market despite APC's infringement throughout the eight-years of this  
6 litigation. During that time STI has maintained a competitive edge in the market, holding the  
7 second largest market share next to APC. Thus, the court finds that although STI has established  
8 irreparable harm, this factor does not weigh heavily in the court's permanent injunction analysis.

9       **B. Inadequacy of Monetary Damages**

10       In order to establish that an injunction is warranted, a plaintiff must show that monetary  
11 damages alone are inadequate to compensate plaintiff for any continued infringement by the  
12 infringer. *See eBay*, 547 U.S. at 391. In its motion, STI argues that monetary damages alone are  
13 inadequate to compensate it for the losses suffered by APC because certain damages like lost  
14 market share and customer goodwill are not quantifiable. The court disagrees.

15       Although STI has suffered a loss of market share, brand recognition, and customer  
16 goodwill as a result of APC's infringement, the court finds that monetary damages are sufficient  
17 compensation for these losses. STI, as part of its overall business strategy, has continuously  
18 licensed the patents-in-suit to competitors. For example, the evidence at trial established that STI  
19 licensed its patents to three competitors: Chatsworth Products, Inc.; Leviton Manufacturing Co.;  
20 and Western Telematic, Inc. Although these competitors have considerably less market presence  
21 than APC, STI's willingness to license its products, particularly as part of litigation settlements,  
22 shows that monetary damages are sufficient and adequate to compensate STI for infringement of  
23 its patents.

24       Further, throughout this trial, STI continuously focused on APC's lack of a license and

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25       <sup>5</sup> The evidence at trial established that APC's selling price for the infringing units was \$633, which is substantially  
26 lower than STI's average selling price of \$885.

1 repeatedly stated that APC could have received a license to keep manufacturing and selling the  
2 ~~AP7900~~ and AP8900 products. *See, e.g.*, STI's Opening Statement, Trial Transcript, p. 79 ("[APC]  
3 could have chosen to license the technology and use it the honest way, but, instead, it chose to  
4 infringe."); p. 108 ("[APC] could have licensed the technology. [STI] has licensed to three other  
5 competitors to use this technology. APC could have signed a license. They chose not to. They  
6 chose to go ahead and infringe."); STI's Closing Statement, Trial Transcript, p. 2794-2795 ("When  
7 the '543 patent issues in 2006, competitors in this market had a choice. They could either take a  
8 license from STI, as many have, or they could stop selling their product. . . . [APC] could have  
9 taken a license. They didn't."). This repeated reference to APC licensing the patents-in-suit does  
10 not support a finding that monetary damages are inadequate to compensate STI for APC's  
11 infringement. Rather, this evidence shows that monetary damages were adequate compensation to  
12 STI. Finally, the court notes that STI never sought an injunction during the pendency of this  
13 litigation. STI never asked for a preliminary injunction, nor did it request an injunction as part of  
14 its requested remedies in its amended complaint. Based on these considerations, the court finds  
15 that monetary damages are adequate to compensate STI for APC's infringement which weighs  
16 heavily against granting an injunction.

### 17 **C. The Balance of Hardships**

18 The court finds that the balance of hardships in this action is a neutral factor. Absent an  
19 injunction, STI has established that it will suffer ongoing hardship by having to compete against its  
20 own patented invention in a limited market. However, evidence at trial has established that STI  
21 successfully competed in the marketplace against APC, despite APC's sales of the infringing  
22 products. Further, to the extent that there is any continued infringement, the availability of a higher  
23 reasonable royalty rate or other monetary damages weighs against a finding that STI would  
24 experience substantial hardship absent an injunction.

### 25 **D. The Public Interest**

26 "[T]he touchstone of the public interest factor is whether an injunction, both in scope and

1 effect, strikes a workable balance between protecting the patentee's rights and protecting the  
2 public from the injunction's adverse effects." *i4i*, 598 F.3d at 863.

3 Here, the court finds that the public interest would be harmed by an injunction. The entry  
4 of an injunction would require APC to remove all ~~AP7900 and~~ AP8900 products, as well as any  
5 products not colorably different from the infringing products, from the limited rack-mounted PDU  
6 market. As APC's products are a significantly cheaper alternative for customers building data  
7 centers, by roughly \$200 per unit, entering an injunction against APC would ultimately hurt  
8 consumers and the public. Especially when there is an alternative to an injunction that would allow  
9 APC to maintain selling its products to the public. Therefore, the court finds that an injunction  
10 would not be in the public's interest. Accordingly, the court shall deny STI's motion for a  
11 permanent injunction.

#### 12 **E. Compulsory License<sup>6</sup>**

13 Because the court finds that an injunction is not warranted in this action, the court must  
14 now examine STI's alternative request for a compulsory license for the patents-in-suit at an  
15 ongoing [5%] ~~15%~~ royalty rate on all sales of APC's ~~AP7900 and~~ AP8900 products from the date  
16 of judgment. *See* Doc. #618.

17 The court has reviewed the documents and pleadings on file in this matter and finds that a  
18 compulsory license at a [5%] ~~15%~~ royalty rate is an appropriate remedy in this action. First, the  
19 court notes that absent a compulsory license, STI will continue to suffer harm from the sale of the  
20 ~~AP7900 and~~ AP8900 products. Second, a [5%] ~~15%~~ royalty rate, ~~or three times the jury's 5%~~  
21 ~~reasonable royalty rate~~, on post-judgment sales is reasonable in this action. Because there is an  
22 inherent and fundamental difference between pre-verdict infringement - where the question of  
23

---

24 <sup>6</sup> [In the court's original order addressing STI's request for a compulsory license, the court granted STI's motion  
25 and set a 15% royalty rate as a compulsory license on the infringing products. *See* Doc. #651, p. 8. The parties have since  
26 agreed that the court "should vacate the order setting the amount of the royalty rate for the post-trial compulsory license  
at 15%" and instead set a 5% royalty consistent with the jury's verdict. Doc. #690, p. 2. Rather than vacate this section in  
its entirety, the court has amended this section to comport with the parties' agreement of a 5% royalty rate on infringing  
sales.]

1 patent validity and infringement are questionable - and post-verdict infringement - where those  
2 questions have been answered affirmatively - the calculus for determining an appropriate or  
3 reasonable royalty rate changes. *Amado v. Microsoft Corp.*, 517 F.3d 1353, 1361-62 (Fed. Cir.  
4 2008). In order to avoid incentivizing defendants to fight each patent infringement action for as  
5 long as possible to obtain the maximum benefit of infringement, an ongoing post-verdict royalty  
6 may appropriately be higher than the jury's pre-verdict reasonable royalty. *Id.* Here, a [5%] ~~±5%~~  
7 royalty rate would still leave APC with a reasonable profit on sales as well as an incentive to sell  
8 products under the license - especially as the evidence in this action established that APC had sales  
9 in excess of \$215 million from 2006-2013 on the infringing products. Further, a [5%] ~~±5%~~ royalty  
10 rate would more equitably compensate STI for any lost sales, customer goodwill, and lost market  
11 share. Therefore, the court shall grant STI's motion and set a compulsory license of the patents-in-  
12 suit with an ongoing royalty rate of [5%] ~~±5%~~ from the date of judgment.

#### 13 **IV. STI's Motion for Supplemental Damages and Prejudgment Interest (Doc. #619)**

14 In its second post-trial motion, STI moves for an order awarding supplemental damages  
15 against APC for sales of the infringing ~~AP7900~~ and AP8900 products after December 31, 2013,  
16 through the date of judgment, and for prejudgment interest on the damages award at the Prime  
17 Interest rate. *See* Doc. #619. Both issues are addressed below.

##### 18 **A. Supplemental Damages**

19 The jury verdict against APC established a 5% royalty rate on APC's sales of infringing  
20 products from December 18, 2006, through December 31, 2013. However, at the time of trial,  
21 APC had not yet produced records for sales after December 31, 2013, through the date of  
22 judgment. To compensate STI fully for APC's infringement, STI argues that the court should  
23 award supplemental damages for all infringing sales of APC's ~~AP7900~~ and AP8900 product lines  
24 from January 1, 2014, through the date of judgment, August 8, 2014, at the 5% reasonable royalty  
25 rate found by the jury. *See Hynix Semiconductor Inc. v. Rambus Inc.*, 609 F. Supp. 2d 951, 964-65  
26 (N.D. Cal. 2009) (holding that in calculating damages through the date of judgment, a court

1 applies the reasonable royalty rate found by the jury). The court agrees and notes that APC does  
2 not oppose an award of supplemental damages from January 1, 2014, through the date of  
3 judgment. Therefore, the court shall grant STI's motion as to this issue.

#### 4 **B. Prejudgment Interest**

5 Section 284 of the Patent Act governs the award of prejudgment interest in patent  
6 infringement cases and states that: "[u]pon finding for the claimant the court shall award the  
7 claimant damages adequate to compensate for the infringement . . . together with interest and costs  
8 as fixed by the court." 35 U.S.C. § 284. The purpose behind prejudgment interest is "to  
9 compensate for the loss of use of money due as damages from the time the claim accrues until  
10 judgment is entered." *Barnard v. Theobald*, 721 F.3d 1069, 1078 (9th Cir. 2013).

11 In its motion, STI seeks prejudgment interest at the Prime interest rate on both the jury's  
12 damages award and any supplemental damage award by the court. *See* Doc. #619. STI argues that  
13 using the Prime rate to calculate prejudgment interest is reasonable in this action because the  
14 Prime rate is sufficient to cover inflation over the lengthy infringement and litigation period. The  
15 court agrees.

16 In contrast to the Prime rate, the court finds that APC's proposed Treasury Bill rate would  
17 not cover inflation over the infringing period. Moreover, in the context of patent infringement, the  
18 Treasury Bill rate is often inappropriate, as its lower rate of return has the potential to result in a  
19 windfall profit for the infringer. *Bard Peripheral Vascular, Inc. v. W.L. Gore & Assocs., Inc.*, 2009  
20 WL 920300, at \*2 (D. Ariz. 2009). Therefore, the court shall grant STI's motion and apply  
21 prejudgment interest at the Prime Interest rate.

### 22 **V. APC's Motion for Judgment as a Matter of Law, and for New Trial (Doc. #626)**

#### 23 **A. Motion for Judgment as a Matter of Law**

##### 24 **1. Legal Standard**

25 Under Rule 50(b), after the court enters judgment, a party may file a renewed motion for  
26 judgment as a matter of law. Rule 50 provides that judgment as a matter of law is appropriate if "a

1 reasonable jury would not have a legally sufficient evidentiary basis to find for the party on that  
2 issue.” FED. R. CIV. P. 50(a)(1). Under Rule 50, the court reviews whether “substantial evidence”  
3 supports the jury verdict. *See Hagen v. City of Eugene*, 736 F.3d 1251, 1256 (9th Cir. 2013). A  
4 verdict is not supported by substantial evidence “when the evidence, construed in the light most  
5 favorable to the nonmoving party, permits only one reasonable conclusion, which is contrary to the  
6 jury’s verdict.” *Id.* In other words, Rule 50 “allows the trial court to remove cases or issues from  
7 the jury’s consideration when the facts are sufficiently clear that the law requires a particular  
8 result.” *Weisgram v. Marley Co.*, 528 U.S. 440, 448 (2000).

## 9           **2. Discussion**

10           In its renewed motion for judgment as a matter of law, APC raises five challenges to the  
11 jury verdict. First, APC argues that there is insufficient evidence to support the jury’s finding that  
12 the AP7900 products literally infringe claim 15 of the ‘543 and ‘771 patents. Second, APC argues  
13 that it was clear error for the court to allow STI to proceed on, and for the jury to consider, a  
14 doctrine of equivalents infringement theory related to the AP7900 products. Third, APC argues  
15 that there is insufficient evidence to support the jury’s finding that both the AP7900 and AP8900  
16 products literally infringe claim 15 of the ‘543 and ‘771 patents. Fourth, APC argues that the jury  
17 verdict on the issue of obviousness is contrary to law. Finally, APC argues that the court’s  
18 inequitable conduct findings are not supported by the evidence. Each separate challenge is  
19 addressed below.

### 20           **~~a. AP7900: Literal Infringement Finding~~**

21           ~~In its motion, APC contends that claim 15 of both the ‘543 and ‘771 patents require a~~  
22 ~~device that includes a current reporting system in “power information determining communication~~  
23 ~~with at least one among said power input and said plurality of power outputs.” See Claim 15(f),~~  
24 ~~‘543 Patent, Claim 15(f), ‘771 Patent. At summary judgment, the court construed “power-related~~  
25 ~~information” to mean “information necessary to quantify or describe power, rather than current~~  
26 ~~alone.” Doc. #163, p. 25. Thus, for literal infringement APC argues that the AP7900 product must~~

1 display information necessary to quantify power. APC argues that because the AP7900 products  
2 only measure current and do not have any power-sensing capabilities, the products do not literally  
3 infringe claim 15 of the '543 and '771 patents. Thus, the jury verdict is not supported by the  
4 evidence submitted at trial.

5 APC's argument is premised on an erroneous characterization of the court's interpretation  
6 of "power information." In contrast to APC's position, "power information" is not limited to the  
7 measurement, quantification or reporting of power. Rather, the court has interpreted "power  
8 information" to mean information sufficient to quantify and/or describe power. Because the  
9 AP7900 products communicate information sufficient to *describe* power, the jury verdict of literal  
10 infringement was supported by substantial evidence. For example, Dr. Michael Aucoin ("Dr.  
11 Aucoin") testified that the vertical AP7900 products (1) report current information, including the  
12 quantity of current flowing at an outlet, and (2) communicate and report voltage information by  
13 reporting whether voltage is present at the outlet. See Doc. #596, Dr. Aucoin Trial Testimony,  
14 p.620-23. Although Dr. Aucoin testified that the AP7900 products do not "directly report a  
15 quantity of power like the [AP]8900 does," he testified that power information could still be  
16 determined by the AP7900 products simply by knowing whether voltage was present at the outlets.  
17 Doc. #596, Dr. Aucoin Trial Testimony, p. 624. Dr. Aucoin testified that by knowing the voltage  
18 present at the outlet, which is a known constant depending on the type of outlet, a person can  
19 perform simple math to determine the power present in each outlet and the total power of the PDU.  
20 Multiplying known voltage by the measured current necessarily provides information sufficient to  
21 quantify or describe power, supporting the jury's verdict of literal infringement. APC's own  
22 product development documentation acknowledges that users of the AP7900 products were  
23 determining power information by performing exactly the same calculations described in Dr.  
24 Aucoin's testimony. Therefore, the court finds that there was sufficient evidence at trial to support  
25 the jury verdict that the AP7900 products literally infringe claim 15 of both the '543 and '771  
26 patents.

1                   **b. AP7900: Doctrine of Equivalents Finding**

2           In its second challenge to the jury verdict, APC argues that it is entitled to judgment as a  
3 matter of law that the AP7900 products do not satisfy the “power information” limitation under a  
4 doctrine of equivalents infringement theory.<sup>7</sup> First, APC argues that STI’s doctrine of equivalent  
5 claim should have been barred due to prosecution history estoppel and thus, it was improper for  
6 the court to allow STI to proceed with this infringement theory. Specifically, APC argues that  
7 because the term “power information” was added to claim 15 by amendment during patent  
8 prosecution, the question of whether the AP7900 products could infringe the asserted claims under  
9 the doctrine of equivalents was not properly before the jury. *See Festo Corp. v. Shoketsu Kinzoku*  
10 *Kogyo Kabushiki Co., Ltd.*, 535 U.S. 722, 733-34 (2002).

11           Here, the court finds that prosecution history estoppel does not bar the doctrine of  
12 equivalents infringement theory in this case because the narrowing of the claim to include the term  
13 “power information” was peripheral, or not directly relevant, to the alleged equivalent. Nowhere in  
14 the patent history did the examiner or the inventors make a distinction between a current reporting  
15 system that was in current-related information determining communication, as opposed to a  
16 current reporting system that was in power information determining communication. The  
17 distinction between current-related information and power information had no bearing whatsoever  
18 on the amendment. Thus, the amendment of claim 15 bears no more than a tangential relation to  
19 STI’s assertion of the doctrine of equivalents in this case. As such, STI did not surrender its  
20 equivalence argument that the communication of current information, where the voltage is known  
21 to be constant, is substantially equivalent to the communication of power information. Therefore,  
22 the issue of whether the AP7900 product infringed under the doctrine of equivalents was properly  
23 before the jury in this action.

24 \_\_\_\_\_  
25           <sup>7</sup> A doctrine of equivalents infringement theory allows for a finding of infringement where the process of an  
26 allegedly infringing product performs in the same manner as a patented design, but does so in a different manner. However,  
because that different manner is so insubstantial from the manner in which the patented design performs the process, it is  
essentially an “equivalent” to the patented design.



1       APC also argues that the jury's finding that the current-reporting feature of the AP7900  
2 products satisfies the "power information" limitation of claim 15 of the '543 and '771 patents  
3 under a doctrine of equivalents infringement theory would entirely vitiate the court's construction  
4 of "power information" which was defined as "information necessary to quantify or describe  
5 power, rather than current alone." See Doc. #163. APC argues STI's doctrine of equivalents theory  
6 erased the important distinction between current and power and should have been precluded. See  
7 *Warner-Jenkinson Co., Inc. v. Hilton-Davis Chemical Co.*, 520 U.S. 17, 39 n.8 (1997) (stating that  
8 when a theory of equivalence entirely vitiates a particular claim element, partial or complete  
9 judgment should be rendered by the court.). *Warner-Jenkinson Co., Inc. v. Hilton-Davis Chemical*  
10 *Co.*, 520 U.S. 17, 39 n.8 (1997).

11       The court has reviewed the documents and pleadings on file in this matter as well as the  
12 evidence submitted at trial and finds that STI's doctrine of equivalents theory in this case does not  
13 vitiate the court's construction of power information because the court's claim construction left  
14 open the issue of equivalents when the voltage is known to be constant. See Doc. #163, Claim  
15 Construction Order, p. 25 n. 10 ("Whether a current measurement alone can qualify as "power  
16 information" where the voltage is known to be constant, as STI argues, raises a question under the  
17 doctrine of equivalents that is not properly before the court at the present time."). At no point did  
18 STI argue that communicating current information alone constituted the communication of power  
19 information. Instead, Dr. Aucoin testified that it is the communication of current information when  
20 voltage is known to be constant that lead to him to conclude that APC infringed under the doctrine  
21 of equivalents. The evidence at trial established that the voltage level in the data centers was both  
22 constant and known, thereby allowing for an easy computation of power information. The  
23 communication of the amount of measured current coupled with the evidence of the known  
24 voltage levels falls well within the insubstantial difference allowed under a doctrine of equivalents  
25 infringement theory. Therefore, the court finds that STI's doctrine of equivalents theory did not  
26 vitiate the "power information" limitation.

1                   **c. ~~AP7900 and AP8900: Literal Infringement Finding~~**

2           In its third challenge, APC argues that the jury finding that ~~both the AP7900 and AP8900~~  
3 products literally infringe claim 15 of the '543 and '771 patents is unsupported by the evidence at  
4 trial because claim 15 requires a display on "another area" of the plugstrip adjacent to the outputs.  
5 The court disagrees.

6           At trial, STI presented sufficient evidence to support the jury's finding that ~~both the~~  
7 ~~AP7900 and AP8900~~ products literally infringe the 'another area' element of claim 15. For  
8 example, Dr. Aucoin testified that the vertical AP8900 products had a digital current information  
9 display that was in 'an other area' of the enclosure from the power outputs or outlets.  
10 See Doc. #596, Dr. Aucoin Trial Testimony, p.604-06, 715-17. ~~His analysis for the AP7900~~  
11 ~~products was the same. Id. at 617.~~ Dr. Aucoin based his conclusions on the fact that the AP7900  
12 ~~and AP8900~~ products ~~both~~ have multiple groups, or pluralities, of outlets and that each group  
13 constituted its own area. He opined that the display in each product was in a different area adjacent  
14 to each separate group of outlets. *Id.* at 612, 715-16. ~~APC's witness Daniel Rohr agreed, testifying~~  
15 ~~directly that the digital display in the AP7900 products is in another area from the outlets. Doc.~~  
16 ~~#601, Daniel Rohr Trial Testimony, p. 198.~~ Therefore, the court finds that there was sufficient  
17 evidence to support the jury verdict of literal infringement for ~~both the AP7900 and AP8900~~  
18 products.

19                   **~~d. Obviousness Advisory Verdict~~**

20           ~~In its fourth challenge, APC argues that based on the evidence presented at trial, STI's '543~~  
21 ~~and '771 patent claims are obvious as a matter of law, and therefore, the jury verdict is not~~  
22 ~~supported by substantial evidence. Specifically, APC argues that there was no dispute that all of~~  
23 ~~the limitations of the asserted claims were known in the prior art. As such, the dispute between the~~  
24 ~~parties was only whether one of ordinary skill in the art at the time of the invention would have~~  
25 ~~had any motivation to combine the prior art in the same manner declared in STI's patents. APC~~  
26 ~~argues that the evidence at trial established that the longstanding problem of current overloads in~~

1 ~~electronic devices would have provided a strong reason for one of ordinary skill to use a digital~~  
2 ~~display in a PDU, and thus, STI's patents were obvious as a matter of law.~~

3 ~~Initially, the court notes that the jury only rendered an advisory finding on the issue of~~  
4 ~~obviousness as obviousness is solely an issue for the court to decide as a matter of law based on~~  
5 ~~the evidence submitted at trial. See *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 427 (2007)~~  
6 ~~(holding that obviousness under 35 U.S.C. § 103 is a question of law based on underlying factual~~  
7 ~~inquiries). Thus, it was ultimately the court's decision whether the patents were obvious and~~  
8 ~~APC's argument that the jury verdict is not supported by substantial evidence is irrelevant in this~~  
9 ~~matter.~~

10 ~~Additionally, the court finds that its ultimate determination that the patents-in-suit were not~~  
11 ~~obvious is supported by substantial evidence. After the jury trial, the court rendered a final order~~  
12 ~~on the issue of obviousness separate from the jury's advisory finding. See Doc. #615. In that order,~~  
13 ~~the court found that "[a]fter reviewing all of the evidence submitted in this action . . . neither~~  
14 ~~STI's '543 patent nor '771 patent would have been obvious to a person of ordinary skill in the field~~  
15 ~~at the time of the invention. In particular, the court finds that the weight of the evidence, consistent~~  
16 ~~with the jury's verdict and [APC's] clear and convincing evidence burden, does not allow for a~~  
17 ~~finding of obviousness." *Id.* The court has reviewed the evidence at trial and finds that the~~  
18 ~~evidence was sufficient to support the court's order that the '543 and '771 patents were not invalid~~  
19 ~~as obvious.~~

#### 20 **e. Inequitable Conduct Findings**

21 A plaintiff's inequitable conduct during the patent application process "is an equitable  
22 defense to patent infringement that, if proved, bars enforcement of a patent." *Therasense, Inc. v.*  
23 *Becton, Dickinson and Co.*, 649 F.3d 1276, 1285 (9th Cir. 2011). To establish the affirmative  
24 defense of inequitable conduct in a patent infringement action, an accused infringer must show that  
25 (1) an individual associated with the prosecution of the patent application at issue made  
26 affirmative misrepresentations of fact, failed to disclose material information, or submitted false

1 material information; and (2) the individual acted with the specific intent to deceive the Patent and  
2 Trademark Office (“PTO”). *Therasense, Inc.*, 649 F.3d at 1289; *Star Scientific, Inc. v. R.J.*  
3 *Reynolds Tobacco Co.*, 537 F.3d 1357, 1365 (Fed. Cir. 2008).

4 In its motion, APC argues that the court’s inequitable conduct findings are not supported  
5 by substantial evidence. Specifically, APC argues that there is no reasonable inference from the  
6 evidence presented at trial other than that Mr. Ewing, along with Attorney Richard Main  
7 (“Attorney Main”) and Attorney Ryan, intended to deceive the Patent Office by making  
8 misrepresentations about the state of the prior art during prosecution of the ‘543 and ‘771 patents.

9 Initially, APC argues that the court erred by making no findings regarding the inequitable  
10 conduct of STI’s initial patent attorney, Attorney Main. However, APC did not accuse Attorney  
11 Main of inequitable conduct until just a few days before trial on May 5, 2014, when APC filed its  
12 proposed findings of fact and conclusions of law on the inequitable conduct claim. The court  
13 appropriately struck the claim against Attorney Main and no further findings were necessary.

14 APC also argues that the court failed to address its allegations that Mr. Ewing and Attorney  
15 Ryan made repeated misrepresentations to the Patent Office. Nor did the court make any findings  
16 regarding the materiality of prior art to the ‘543 patent. Rather, the court only addressed Mr.  
17 Ewing’s failure to disclose prior art to the Patent Office. Finally, APC argues that the court’s  
18 limited findings on materiality and intent are not supported by the law of the evidence submitted at  
19 trial. The court disagrees.

20 The evidence submitted at the bench trial does not support APC’s contentions that Attorney  
21 Ryan and Mr. Ewing made any misrepresentations to the patent examiner. APC asserts that the  
22 court did not make any findings regarding Ryan’s misrepresentations. However, the court  
23 specifically found that Ryan “responded fairly, reasonably and truthfully to the examiner’s  
24 request.” *See* Doc. #613. This finding necessarily means that Ryan did not make any  
25 misrepresentations before the Patent Office. Similarly, the court finds that general materiality  
26 findings were unnecessary in this action because the court found that Mr. Ewing and Attorney

1 Ryan did not have the specific intent to deceive the Patent Office during the prosecution of the  
2 '543 patent. Thus, the court was not required to make additional findings on materiality as that  
3 issue is irrelevant absent a finding of specific intent to deceive. Further, the evidence submitted at  
4 trial supports the court's finding that Mr. Ewing and Attorney Ryan did not intend to deceive the  
5 PTO. The overwhelming weight of evidence conclusively establishes that the specific intent to  
6 deceive the PTO is not "the single most reasonable inference able to be drawn from the evidence."  
7 Doc. #613. Instead, a more plausible inference is that Mr. Ewing - having already provided the  
8 MSVM user manual, RPC-21 comparison chart, and other material to his attorney - reasonably  
9 relied on his attorney to decide what had to be disclosed to the PTO. Thus, there is utterly no  
10 evidence that either Mr. Ewing or Attorney Ryan made a deliberate decision to withhold any prior  
11 art from the patent office. Therefore, the court finds that there was substantial evidence to support  
12 its inequitable conduct findings and shall deny APC's motion for judgment as a matter of law.

## 13 **B. Motion for a New Trial**

### 14 **1. Legal Standard**

15 Under Rule 59, the court may grant a motion for a new trial after a jury trial for any reason  
16 for which a new trial has previously been granted in federal court. FED. R. CIV. P. 59(a)(1)(A).  
17 These reasons include (1) correcting manifest errors of law or fact; (2) newly discovered evidence;  
18 (3) to prevent manifest injustice; and (4) an intervening change in controlling or governing law.  
19 *See Allstate Ins. Co. v. Herron*, 634 F.3d 1101, 1111 (9th Cir. 2011).

### 20 **2. Discussion**

21 As an alternative argument to its renewed motion for judgment as a matter of law, APC  
22 argues that it is entitled to a new trial on both the infringement and invalidity issues because the  
23 court committed several highly prejudicial errors at trial including: (1) improperly stating the law  
24 concerning the issue of obviousness in Jury Instruction No. 22; (2) presenting the jury with an  
25 inappropriate verdict form; (3) improperly applying the clear and convincing evidence burden of  
26 proof in Jury Instruction No. 18; (4) improperly defining the term "plugstrip" in Jury Instruction

1 No. 10; (5) excluding evidence about the BayTech RPC-7, a relevant piece of prior art;  
2 (6) excluding the patent file history; (7) excluding evidence of the '543 patent re-examination; and  
3 (8) failing to instruct the jury of the term "power." *See* Doc. #626. Each issue is addressed below.

4 **a. Jury Instruction No. 22**

5 In its motion for a new trial, APC argues that the court presented an incorrect and  
6 prejudicial instruction on the issue of obviousness to the jury. APC argues that Jury Instruction  
7 No. 22,<sup>8</sup> improperly required APC to prove that a person of skill would have "realized the benefit  
8 of the combination." APC argues that under *KSR*, there is simply no requirement for a defendant to  
9 show that one of skill would have realized the benefit of the combination in order to show  
10 obviousness.

11 The court disagrees and finds that Jury Instruction No. 22 correctly states the legal test for  
12 obviousness. The language to which APC objects is taken directly from *KSR* and has been cited  
13 repeatedly by the Federal Circuit and district courts. *See KSR*, 550 U.S. at 424 ("The proper  
14 question to have asked was whether a . . . designer of ordinary skill . . . would have seen a benefit  
15 to" combining the elements). Thus, the court did not err by including this language in the  
16 instruction.

17 **b. Verdict Form<sup>9</sup>**

18 In its second argument, APC contends that the verdict form presented the jury with a  
19 distorted view of the test for obviousness that unfairly favored STI. Specifically, APC argues that  
20 the verdict form included special interrogatories on secondary considerations that favored STI's

---

21 <sup>8</sup> Jury Instruction No. 22 states in its entirety: "To prove that [STI's] patent claims would have been obvious, APC  
22 need not show that a person having ordinary skill in the field of the invention would have combined the elements in the  
23 manner claimed for the same reason as the reason that motivated the inventor(s) of the '543 patent and/or '771 patents. Any  
24 need or problem in the field of invention at the time of the invention can provide a reason for combining the elements in  
25 the manner claimed, but only if a person of ordinary skill in the art would have realized the benefits of the combination."

26 <sup>9</sup> [In this challenge, APC contended that the court presented an improper verdict form to the jury because it  
contained certain question on the issue of patent obviousness. The court notes that the challenged portion of the jury verdict  
has been vacated pursuant to the court's February 23, 2017 order. Doc. #691. However, because APC's challenge in the  
present motion relates solely to the manner in which the verdict form was written, and not the jury's actual verdict, this  
section is not impacted by the Federal Circuit's remand order or the court's February 23, 2017 order. Doc. #691.]

1 non-obviousness arguments, yet excluded interrogatories regarding the primary *Graham* inquiries  
2 of obviousness. *See Graham v. John Deere Co.*, 383 U.S. 1 (1966). APC argues that this verdict  
3 form improperly focused the jury's consideration of obviousness on 'secondary considerations' of  
4 nonobviousness and unfairly primed the jury for a finding of nonobviousness. Given STI's heavy  
5 reliance on secondary considerations at trial, this error severely prejudiced APC.

6 APC's argument concerning the format of the verdict form is without merit. The verdict  
7 form correctly presented the obviousness issues to the jury. First, as previously addressed in APC's  
8 motion for judgment as a matter of law, the issue of whether the patent claims were obvious was a  
9 question of law for the court. Thus, whether or not the verdict form favored STI on the issue of  
10 obviousness is of no importance as it was the court, and not the jury, that made the ultimate  
11 decision to reject APC's defense that the patent claims were obvious. Further, APC's argument is  
12 erroneous because it ignores all of the jury instructions on the issue of obviousness. In the jury  
13 instructions, the jury was properly instructed that it must evaluate the four *Graham* factual  
14 inquiries, and the court's instructions appropriately addressed each factor in separate instructions.  
15 Given the specific direction provided by the instructions, and in light of the fact that most of the  
16 *Graham* factors were not disputed by the parties or at issue in this action, the verdict form  
17 correctly identified the only relevant factual issues for the jury. Therefore, the court finds that the  
18 verdict form was not prejudicial to APC.

19 **c. Jury Instruction No. 18**

20 In its third challenge, APC argues that Jury Instruction No. 18<sup>10</sup> improperly applied the  
21 clear and convincing burden of proof to the legal question of obviousness. However, it is well  
22 established that obviousness must be proven by clear and convincing evidence. *Microsoft Corp. v.*  
23 *i4i Ltd. P'ship*, 131 S. Ct. 2238, 2242 (2011) ("[A] defendant seeking to overcome this  
24 presumption must persuade the factfinder of its invalidity defense by clear and convincing  
25

---

26 <sup>10</sup> Jury Instruction No. 18 provides in relevant part: "APC must prove obviousness by clear and convincing evidence, which means that you must be persuaded by the evidence that obviousness is highly probable."

1 evidence"). Therefore, the court properly instructed the jury that APC had the burden of proving  
2 obviousness by clear and convincing evidence.

3 **d. Jury Instruction No. 10**

4 In its fourth challenge, APC argues that the court incorrectly defined the term "plugstrip" to  
5 be a "one-piece" configuration in Jury Instruction No. 10.<sup>11</sup> APC argues that the court's  
6 construction of plugstrip limiting the claimed invention to a "one-piece" configuration was clearly  
7 erroneous because that is not supported by the claim language and specification.

8 The court finds that it correctly defined the term plugstrip in Jury Instruction No. 10.  
9 Throughout this action, the court and the parties repeatedly referred to the the term plugstrip in the  
10 '543 patent as a "one-piece, fully integrated device." The court's definition of the term "plugstrip"  
11 is entirely consistent with the language of the claims, the specification and the prosecution history  
12 of the '543 patent. Therefore, the court did not err in its definition of plugstrip in the jury  
13 instructions.

14 **e. BayTech RPC-7**

15 In its fifth argument for a new trial, APC argues that the court improperly limited evidence  
16 of the BayTech RPC-7 device which APC claims was relevant to its obviousness defense.

17 Initially, the court notes that its exclusion of evidence relating to certain features of the  
18 BayTech RPC-7 product has been the subject of extensive briefing and two rulings. *See*  
19 Doc. ##505, 524. Certain evidence relating to the RPC-7 was excluded from trial because APC  
20 failed to meet the disclosure requirements of the local rules governing this case. After APC filed  
21 its motion for clarification, the court reiterated that "APC is precluded from proffering any  
22 evidence that the RPC-7 satisfies any other claim element at issue in the '543 patent" because APC  
23 failed to follow the local patent rules during prosecution of this case. *See* Doc. #524. Therefore,  
24 the court's limitation of the RPC-7 was proper and a new trial is not warranted on this issue.

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25 <sup>11</sup> Jury Instruction No. 10 provides in pertinent part: "Plugstrip" appears in Claim 15 of the '543 patent. The term  
26 'plugstrip' requires all of the limitations of the claim, that is, elements A, B, C, D, E, and F, including the reporting system,  
are contained within a one-piece device."



1                   **f. Patent File History**

2           In its sixth argument for a new trial, APC argues that the court improperly limited evidence  
3 of the file history of the '543 and '771 patents which prejudiced APC's ability to prove its  
4 affirmative defenses. Specifically, APC contends that the court excluded testimony about the  
5 patent prosecution history and precluded APC's expert from explaining what happened during the  
6 lengthy prosecution history of the patents at issue to the jury. APC argues that such testimony  
7 explaining the prosecution history was directly relevant to the jury's consideration of invalidity  
8 and obviousness.

9           The court disagrees and finds that it correctly limited testimony regarding the file history of  
10 the '543 patent. During trial, the court admitted the complete file history for each patent, and the  
11 court twice played for the jury the Federal Judicial Center's video entitled "The Patent Process, An  
12 Overview for Jurors," which provided a clear explanation of Patent Office practices and  
13 procedures. Further, the court provided the jury with a detailed glossary of terms relating to the  
14 prosecution of the patents, as requested by APC. Thus, sufficient evidence of the file history was  
15 presented to the jury. All the court excluded was APC's attempts to have a witness characterize the  
16 prosecution history or argue its meaning. The court properly excluded such testimony under  
17 Rule 403 of the Federal Rules of Evidence.

18                   **g. '543 Patent Reexamination**

19           In its seventh challenge, APC argues that the court improperly excluded evidence of the  
20 '543 patent reexamination before the patent office.

21           This issue was fully briefed and addressed in connection with STI's motion in limine #1.  
22 See Doc. #431. In a thorough and well-reasoned order, the court granted STI's motion, concluding  
23 that (1) the '543 reexamination was not final and the status and holdings of the reexamination  
24 proceedings were of little relevance to the present action, (2) the prejudicial effect of informing the  
25 jury about the reexamination proceeding would far outweigh any probative value; and (3) allowing  
26 evidence of the reexamination would confuse the jury. See Doc. #505. Under relevant federal

1 circuit precedent, the court's ruling was correct. Thus, the court properly excluded evidence of the  
2 reexamination proceedings involving the '543 patent and a new trial is not warranted on this issue.

3 **h. "Power" Instruction**

4 Finally, APC argues that the court did not instruct the jury on the agreed definition of the  
5 term "power" which left the jury confused as to what that key term meant. However, the court  
6 properly defined and instructed the jury on the meaning of the term "power information" which  
7 was the relevant claim term in claim 15 of the '543 and '771 patents. At trial, APC argued that the  
8 AP7900 products were not "in power information determining communication" with at least one  
9 of the power input or power outputs as required by element 15(f) of both patents. APC did not  
10 argue that there was a dispute as to the issue of power. As such, the relevant disputed term at trial  
11 was "power information" and not "power." Because the court defined the relevant claim term in  
12 the jury instructions, a new trial is not warranted. Accordingly, the court shall deny APC's motion  
13 for a new trial.  
14

15 IT IS THEREFORE ORDERED that plaintiff's motions for a permanent injunction, or in  
16 the alternative, for a compulsory license (Doc. #618) and for supplemental damages and  
17 prejudgment interest (Doc. #619), and defendant's renewed motion for judgment as a matter of  
18 law, or in the alternative, for a new trial (Doc. #626) are addressed in accordance with this  
19 AMENDED and RE-ISSUED ORDER.

20 IT IS SO ORDERED.

21 RE-ISSUED this 12<sup>th</sup> day of May, 2017.

22  
23 

24 LARRY R. HICKS  
25 UNITED STATES DISTRICT JUDGE  
26

# EXHIBIT 3

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6 UNITED STATES DISTRICT COURT  
7 DISTRICT OF NEVADA

8 \* \* \*

9 SERVER TECHNOLOGY, INC.,

10 Plaintiff and Counter-Defendant,

11 v.

12 AMERICAN POWER CONVERSION  
13 CORPORATION,

14 Defendant and Counterclaimant.  
15  
16

Case No. 3:06-cv-0698-LRH-VPC

AMENDED ORDER

17 Following a jury trial in May 2014, certain of the ~~AP7900 and~~ AP8900 products sold by  
18 defendant American Power Conversion Corporation ("APC") were found to infringe claim 15 of  
19 U.S. Patent No. 7,043,543 ("the '543 patent") and claim 15 of U.S. Patent No. 7,702,771  
20 ("the '771 patent"). On March 31, 2015, the court entered an order directing the parties to  
21 prepare an appropriate compulsory license with an ongoing [5%] ~~15%~~ royalty rate on sales of  
22 certain licensed products, defined below, that are sold by APC from the date of judgment,  
23 August 8, 2014. Doc. #651. The parties submitted a proposed order with the terms set forth  
24 below.

25 The court hereby enters the following [amended] order:<sup>1</sup>  
26

27  
28 <sup>1</sup> [This is an amended order of the court's now-vacated order entering an ongoing royalty (ECF No. 663)  
pursuant to the court's February 23, 2017 vacate order (ECF No. 691).]

- 1           1. The licensed products are defined to include the following products sold by APC:  
2           ~~AP7930, AP7931, AP7932, AP7940, AP7941, AP7950, AP7951, AP7952, AP7953,~~  
3           ~~AP7954, AP7960, AP7961, AP7990, AP7991, AP7998,~~ AP8941, AP8958,  
4           AP8958NA3, AP8959, AP8959NA3, AP8961, AP8965, AP8981, and products that  
5           are not colorably different from one or more of the specifically identified licensed  
6           products.
- 7           2. For the period beginning on the date judgment was entered, August 8, 2014, and  
8           continuing until the expiration of the last to expire of the '543 patent or the '771  
9           patent, APC shall pay plaintiff Server Technology, Inc. ("STI") an ongoing royalty,  
10          as a percentage of gross sales, of [5%] ~~15%~~ on all licensed products manufactured,  
11          sold, imported into, or exported from, the United States.
  - 12           a. APC represents that it promptly will submit a supersedeas bond or similar  
13           instrument (jointly referred to as the "bond") for court approval pursuant to  
14           Rule 62(d) of the Federal Rules of Civil Procedure. The royalty payment  
15           obligation set forth in the following paragraph 2(b) is conditioned upon the  
16           inclusion of a provision in the bond providing that the proceeds of the bond  
17           may be used to satisfy both the amended judgment entered in this case and  
18           any royalty payments that are due pursuant to this order.
  - 19           b. APC will be obligated to pay to STI all reasonable royalties from the date of  
20           judgment (August 8, 2014), plus post-judgment interest, owed under the terms  
21           of the compulsory license set forth in this order within 45 days of the date the  
22           appellate court's mandate would issue under Federal Rule of Appellate  
23           Procedure 41(b) in the appeal from the judgment in this case, regardless of  
24           whether a motion for stay of mandate is filed or the mandate is stayed  
25           pursuant to Rule 41(d)(2).
  - 26           c. Thereafter, APC shall pay to STI all royalties owed on a quarterly basis, with  
27           payment to be made within 60 days of the end of each calendar quarter, except  
28           that for any payment that would be due less than 45 days after the date the

1                   appellate court's mandate would issue as set forth in paragraph 2(a), the  
2                   deadline for any such payment shall be extended to a date 45 days after the  
3                   issuance of the mandate as set forth above. If for any reason any royalty is not  
4                   paid when due, interest shall accrue on the unpaid balance at a rate of one and  
5                   one-half percent (1.5%) per month from the date the payment was due.

- 6                   3. Each quarterly payment shall be accompanied by a written accounting of the sales of  
7                   licensed products that (a) states total sales (in dollars) of licensed products during the  
8                   quarter, and (b) provides by product number, total sales during the quarter (in units  
9                   and dollars) of each licensed product. The accounting shall be certified under penalty  
10                  of perjury as accurate by an appropriate representative of APC. APC shall keep  
11                  proper records and books of account in accordance with past practices necessary to  
12                  calculate royalties under this order.
- 13                4. APC shall allow STI to conduct an audit, to occur no more than once per twelve-  
14                month period, of APC's records and documents to ensure compliance with this order.  
15                Any such audit shall be conducted by an independent certified public accountant of  
16                STI's choosing. The auditor shall obligate him or herself in writing to APC to  
17                maintain in confidence all information that it receives from APC, and shall submit a  
18                written report to STI (with a copy to APC) containing only its conclusions as to the  
19                quantity and sales of licensed products for which royalties should be paid under this  
20                order. The cost of the audit will be borne solely by STI unless the results of the audit  
21                show a 5% or more underpayment of royalties due to STI during the period audited,  
22                in which case all auditing costs including the fees of the auditor shall be paid by APC.
- 23                5. APC shall notify STI of any design changes that may be applied to the licensed  
24                products should APC take the position that such design changes take the modified  
25                product outside the scope of an ongoing royalty.
- 26                6. APC shall mark all licensed products manufactured in, sold in, imported into, or  
27                exported from the United States with the applicable patent number in compliance  
28                with 35 U.S.C. § 287.

1 7. The court specifically retains jurisdiction to enforce, modify, or terminate this order  
2 as the equities may require, and to resolve any disputes, including disputes over  
3 whether an APC product other than the licensed products is subject to the royalty  
4 provisions of this order or infringes claim 15 of the '543 patent or claim 15 of the  
5 '771 patent.  
6

7 IT IS SO ORDERED.

8 DATED this 12<sup>th</sup> day of May, 2017.

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10 LARRY R. HICKS  
11 UNITED STATES DISTRICT JUDGE  
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# EXHIBIT 4



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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

SERVER TECHNOLOGY, INC.,  
  
Plaintiff and Counter-Defendant,  
  
v.  
  
AMERICAN POWER CONVERSION  
CORPORATION,  
  
Defendant and Counterclaimant.

Case No. 3:06-cv-0698-LRH-VPC

AMENDED VERDICT

Instructions: When answering the following questions and filling out this Verdict Form, please refer to the Jury Instructions for guidance on the law applicable to the subject matter covered by each question.

WE THE JURY, in the above-entitled case, unanimously find as follows:[<sup>1</sup>]

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<sup>1</sup> [This is an amended jury verdict in light of the Federal Circuit's September 23, 2016 remand order in this action (*Server Tech., Inc. v. Am. Power Conversion Corp.*, 657 Fed. Appx. 1030 (Fed. Cir. 2016)), the parties' joint status report (ECF No. 690), and the court's February 23, 2017 vacate order (ECF no. 691).]

1 **INFRINGEMENT**

2 **~~Question 1: Server Tech's '543 Patent: APC's 7900 Series~~**

3 ~~Has Server Tech proven by a preponderance of the evidence that APC's AP 7900 series~~  
4 ~~of products infringe Claim 15 of its '543 Patent?~~

5  ~~X  Yes   No~~

6  
7 ~~If you find that Server Tech has proven by a preponderance of the evidence that APC's~~  
8 ~~AP 7900 series of products infringe Claim 15 of its '543 Patent, do you find that these products~~  
9 ~~literally infringe Claim 15 of the '543 Patent, infringe under the doctrine of equivalents, or both?~~  
10 ~~(Check all the apply)~~

11  ~~X  Literal Infringement~~

12  ~~X  Infringement under the Doctrine of Equivalents as to the "power information"~~  
13 ~~element in Claim 15, element F(ii), in the '543 Patent, as referred to in Instruction No. 15.~~

14  
15 **Question 2: Server Tech's '543 Patent: APC's 8900 Series**

16 Has Server Tech proven by a preponderance of the evidence that APC's AP 8900 series  
17 of products infringe Claim 15 of the '543 patent?

18  X  Yes   No

19  
20 **~~Question 3: Server Tech's '771 Patent: APC's 7900 Series~~**

21 ~~Has Server Tech proven by a preponderance of the evidence that APC's AP 7900 series~~  
22 ~~of products infringe Claim 15 of its '543 Patent?~~

23  ~~X  Yes   No~~

24 ///

25 ///

26 ///

27 ///

28 ///

1        ~~If you find that Server Tech has proven by a preponderance of the evidence that APC's~~  
2 ~~AP 7900 series of products infringe Claim 15 of its '771 Patent, do you find that these products~~  
3 ~~literally infringe Claim 15 of the '771 Patent, infringe under the doctrine of equivalents, or both?~~  
4 ~~(Check all the apply)~~

5          X   Literal Infringement

6          X   Infringement under the Doctrine of Equivalents as to the "power information"  
7 element in Claim 15, element F(ii), in the '771 Patent, as referred to in Instruction No. 15.

8  
9        **Question 4: Server Tech's '771 Patent: APC's 8900 Series**

10        Has Server Tech proven by a preponderance of the evidence that APC's AP 8900 series  
11 of products infringe Claim 15 of the '543 patent?

12          X   Yes           No

13  
14  
15        **INVALIDITY**

16        ~~The ultimate legal conclusion that must be reached on the obviousness question is~~  
17 ~~whether APC has proven by clear and convincing evidence that the claimed invention(s), recited~~  
18 ~~in Claim 15 of the '543 patent and Claim 15 of the '771 patent, would have been obvious to a~~  
19 ~~person of ordinary skill in the field at the time of the invention. In order to properly reach a~~  
20 ~~conclusion the following questions must be answered:~~

21  
22        **Question 5:**

23        ~~Do you find that APC has proven by clear and convincing evidence that Claim 15 of the~~  
24 ~~'543 Patent would have been obvious to a person of ordinary skill in the field at the time of the~~  
25 ~~invention ("person of ordinary skill" being defined in Instruction No. 23 titled "Level of~~  
26 ~~Ordinary Skill")?~~

27               Yes      X   No

28        ///

1 **Question 6:**

2 Do you find that APC has proven by clear and convincing evidence that Claim 15 of the  
3 '771 patent would have been obvious to a person of ordinary skill in the field at the time of the  
4 invention ("person of ordinary skill" being defined in Instruction No. 23 titled "Level of  
5 Ordinary Skill")?

6        Yes   X   No

7  
8 **Question 7: Considerations bearing upon Obviousness or Non-obviousness**

9 **A. Commercial Success**

10 Do you find that Server Tech's claimed invention was commercially successful due to the  
11 merits of the claimed invention?

12   X   Yes        No

13  
14 **B. Long Felt Need**

15 Do you find that there was a long felt need for a solution to the problem facing the  
16 inventors?

17   X   Yes        No

18  
19 **C. Copying**

20 Do you find that APC or others copied Server Tech's claimed invention?

21   X   Yes        No

22  
23 **D. Unexpected Superior Results**

24 Do you find that Server Tech's claimed invention achieved unexpectedly superior results  
25 over the closest prior art?

26   X   Yes        No

27 ///

28 ///

1 ~~E. Praise from the Industry~~

2 ~~Do you find that others in the field praised Server Tech's claimed invention?~~

3 ~~X   Yes        No~~

4  
5 **DAMAGES**

6 Proceed to Questions 8-11 only if you answered "yes" to at least one of Questions 1  
7 through 4. On the other hand, if you answered "no" to all of Questions 1 through 4, then skip  
8 Questions 8-11.

9  
10 **Question 8: Infringement Damages**

11 Did Server Tech prove by a preponderance of the evidence that it is entitled to recover  
12 lost profits as a direct result of APC's infringement?

13        Yes   X   No

14  
15 If your answer to Question 8 is "Yes," then proceed to Questions 9 through 11. If you  
16 answer to Question 8 is "No," then skip Question 9 and proceed to Questions 10 and 11.

17  
18 **Question 9: Lost Profits**

19 What amount of lost profits, if any, do you award Server Tech as a result of infringement  
20 by APC?

21 \$   0.00  

22  
23 **Question 10: Reasonable Royalty**

24 For those infringing sales for which Server Tech has not proven lost damages, what  
25 amount has it proved it is entitled to as a reasonable royalty?

26 \$  10,787,634.00 

27 ///

28 ///

**Question 11: Total Damages**

If Server Tech has proven lost profits and/or reasonable royalty, what amount has it proved it is entitled to as total damages?

\$ 10,787,634.00

You have now completed the Verdict Form. Have your foreperson date and sign the form below. Then, inform the court security officer that you have reached a unanimous verdict. Do not give the envelope to the bailiff. Your foreperson should retain possession of the Verdict Form until it is requested by the judge when the court reconvenes.

Dated this 29 day of May, 2014

/s/ Jury Foreperson

JURY FOREPERSON

IT IS THEREFORE ORDERED that the vacated jury verdict dated May 29, 2014 (ECF No. 590) is AMENDED and RE-ISSUED in accordance with this Amended Verdict.

IT IS SO ORDERED.

DATED this 12<sup>th</sup> day of May, 2017.



LARRY R. HICKS  
UNITED STATES DISTRICT JUDGE